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11 Attorneys for Defendant  
12 THE DOW CHEMICAL COMPANY

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 LOS ANGELES DIVISION

16 JORGE ACOSTA CORTES; ANTONIO  
ACUNA AGÜERO; GERARDO  
17 ACUNA MURILLO; JAVIER RAMON  
AGÜERO ARTAVIA; TEODORO  
18 AGÜERO MORA; VÍCTOR HUGO  
AGUILAR CESPÉDES; JOSE  
19 JOAQUIN AGUILAR MONTERO;  
OSCAR AGUILAR MORA; ALBINO  
20 AGUILAR SOLANO; JOSE SIMON  
AGUIRRE AGUIRRE; JOSE  
21 FRANCISCO AGUIRRE AGUIRRE;  
ALFONSO AGUIRRE VILLAGRA;  
22 SANTOS VIANNEY AGUIRRE  
ZUNIGA; CLEMENTE ALVARADO  
23 RIOS; ALCIDES ALVARADO  
ZAMORA; ANGEL JULIAN  
24 ALVAREZ AGUIRRE; ANTONIO  
ALVAREZ ALVAREZ; LUIS  
25 ANTONIO ALVAREZ ALVAREZ;  
JESUS ALVAREZ BUSTOS;  
26 SIGIFREDO ALVAREZ DIAZ;  
ROQUE ALVAREZ MORALES;  
27 HERNAN ALVAREZ ROSALES;  
GIOVANNI ALVAREZ RUIZ;  
28 VÍCTOR MANUEL ALVAREZ

FILED  
2009 JAN -9 PM 1:13  
CLERK U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIF.  
LOS ANGELES  
BY \_\_\_\_\_

CV09-0193  
CASE NO.

NOTICE OF REMOVAL OF  
ACTION UNDER 28 U.S.C.  
§§ 1332(d), 1446, and 1453  
(Class Action Fairness Act)

1 VILLATORO; JOSE ELVIS ANGULO )  
 2 ANGULO; FERNANDO ARAGON )  
 3 MIRANDA; SERGIO ARAGON )  
 4 MIRANDA; CRISTOBAL ALBERTO )  
 5 ARAGON RUGAMA; MARVIN )  
 6 ARAYA ALVAREZ; JOSE ANGEL )  
 7 ARAYA BOLANOS; CLAUDIO )  
 8 ARAYA HERNANDEZ; JUAN )  
 9 ARAYA ORTEGA; BENEDICTO )  
 10 ARAYA ROJAS; JOSE DONALDO )  
 11 ARCE BEJARANO; VICTOR JULIO )  
 12 ARCE QUESADA; ELIECER ARCE )  
 13 RETANA; VICTOR ARGUEDAS )  
 14 MUNOZ; VIDAL ARIAS AVILA; )  
 15 GILBERTO ARIAS MEZA; )  
 16 HERMINIO ARIAS PANIAGUA; )  
 17 BIENVENIDO ARIAS SOLANO; )  
 18 EDUARDO ARIAS VILLALOBOS; )  
 19 RAFAEL ANTONIO AVILA )  
 20 CAMBRONERO; HUGO AVILES )  
 21 JUAREZ; RICARDO ALBERTO )  
 22 BALDELOMAR BALDELOMAR; )  
 23 EDUARDO FAUSTO BALTODANO )  
 24 BALTODANO; VIRGILIO )  
 25 BALTODANO DIAZ; MERIDO )  
 26 BALTODANO DIAZ; JOSE MARVIN )  
 27 BALTODANO ZUNIGA; ALFONSO )  
 28 BARAHONA FONSECA; OLIVER )  
 GERARDO BARAHONA FONSECA;  
 HUGO BARBOZA FERNANDEZ;  
 AMALIO BARBOZA MENDOZA;  
 JOSE FRANCISCO BARQUERO  
 BARQUERO; JESUS MARIA  
 BARQUERO CAMPOS; CARLOS  
 LUIS BARQUERO PICADO; CARLOS  
 LUIS BARRIOS BARRIOS; LUIS  
 ALVARO BENAVIDES ESQUIVEL;  
 JOVEL BERROCAL CHINCHILLA;  
 GABRIEL BERROCAL JIMENEZ;  
 FRANCISCO BOJORGE APU;  
 AGUSTIN BOLANOS MONTOYA;  
 GERVASIO BOLANOS MONTOYA;  
 RIGOBERTO BOLIVAR SILES;  
 RAFAEL BONILLA MADRIGAL;  
 SILVERIO BONILLA ZUNIGA;  
 HERIBERTO BRAVO HERNANDEZ;  
 JOSE BRENES CISNEROS; JESUS  
 FRANCISO BRENES CRUZ;  
 ALEJANDRO BRENES GUEVARA;  
 EDWIN BRENES LEON; CESAR  
 AURELIO BRENES MARTINEZ;  
 EDGAR BRENES MORA;  
 REMBERTO BRICENO MACOTELO;  
 BENEDICTO BRIONES GARCIA;  
 JOSE LEON BRIONES RANGEL;

JOSE GREGORIO BUZANO VEGA;  
JOSE LUIS CALDERON BARBOZA;  
OLDEMAR CALDERON SOLANO;  
MELVIN CALVO VARGAS; RAFAEL  
ANGEL CAMBRONERO GUERRERO;  
JOSE ALBERTO CAMPOS CAMPOS;  
FRANCISCO CAMPOS ZUMBADO;  
RODOLFO CARBALLO  
BARRIENTOS; MARIANO  
CARBALLO VARGAS; JOSE LIDIER  
CARDENAS GARCIA; JUAN PABLO  
CARRILLO CARRILLO; FELIX  
CARRILLO MATARRITA; CAMILO  
CARRILLO  
MATARRITA; FRANCISCO  
CARRILLO OBREGON,

Plaintiffs,

Vs.

DOLE FOOD COMPANY, INC.; DOLE  
FRESH FRUIT COMPANY;  
CHIQUITA BRANDS COMPANY,  
NORTH AMERICA; CHIQUITA  
BRANDS, INC.; CHIQUITA BRANDS  
INTERNATIONAL, INC.; DEL  
MONTE FRESH PRODUCE, INC.;  
DEL MONTE FRESH PRODUCE  
(WEST COAST), INC.; SHELL  
AGRICULTURAL CHEMICAL  
COMPANY; SHELL CHEMICAL  
COMPANY; and THE DOW  
CHEMICAL COMPANY; and DOES 1  
through 100, inclusive,

Defendants.

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT  
COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of  
2005 ("CAFA"), 28 U.S.C. §§ 1332(d) and 1453, The Dow Chemical Company  
("Dow Chemical"), one of the defendants, hereby removes the above-entitled action  
along with the twenty-nine other identical actions filed the same day by the same

1 lawyers in their entirety from the Superior Court of the State of California for the  
2 County of Los Angeles to the United States District Court for the Central District of  
3 California. This Court has removal and subject matter jurisdiction over the parties  
4 because these cases constitute a “mass action” under CAFA.

5 Dow Chemical would respectfully show the Court that this action is properly  
6 removable to this Court for the following reasons:

7 1. This action was filed as No. BC 403364; *Acosta Cortes, et al. v. Dole*  
8 *Food Co., et al.* on December 8, 2008 in the Superior Court of California for the  
9 County of Los Angeles. This is one of thirty identical cases filed by the same  
10 lawyers on the same date on behalf of a total of 2,485 plaintiffs from Costa Rica,  
11 Honduras, Panama and Guatemala. The claimants are divided alphabetically (by  
12 country) into 30 cases of less than 100 plaintiffs (most have 90) each in a transparent  
13 attempt to avoid federal jurisdiction under the “mass action” provisions of CAFA.  
14 *See* 28 U.S.C. § 1332(d)(11)(B).

15 2. *Freeman v. Blue Ridge Paper Products, Inc.* Less than two weeks ago,  
16 the United States Court of Appeals for the Sixth Circuit recently decided a similar  
17 case, where, like here, the plaintiffs arbitrarily divided their claim into multiple  
18 actions for no reason “other than to avoid the clear purpose of CAFA,” and held that  
19 “remand was not proper.” *Freeman v. Blue Ridge*, — F.3d —, No. 08-6321, 2008  
20 WL 5396249, at \*1 (6th Cir. December 29, 2008). The court of appeals went on to  
21 find that “CAFA was clearly designed to prevent plaintiffs from artificially  
22 structuring their suits to avoid federal jurisdiction.” *Id.* at \*2. Important here, the  
23 court went on to specifically declare that CAFA’s “purposes support reading CAFA  
24 not to permit the splintering of lawsuits solely to avoid federal jurisdictions in the  
25 fashion done in this case.” *Id.* at \*3. This same reasoning applies with equal force  
26 here and these cases are collectively removable as a CAFA “mass action.” *See also*  
27 *Proffitt v. Abbott Laboratories*, No. 2:08-CV-151, 2008 WL 4401367, at \*5 (E.D.  
28 Tenn. Sept. 23, 2008) (holding that there was “no justification for dividing one

1 alleged drug conspiracy involving one defendant into eleven lawsuits . . . other than  
2 to circumvent the CAFA and federal court jurisdiction.”).

3 3. Including the instant action, each of the following cases is being  
4 removed to this court:

	Case No.	Name
		<i>Costa Rica</i>
1.	BC403364	<i>Jorge Acosta Cortes, et al. v. Dole Food Co., Inc., et al.</i>
2.	BC403380	<i>Damian Carriillo Obregon, et al. v. Dole Food Co., Inc., et al.</i>
3.	BC403378	<i>Hermenegildo Garita Sandi, et al. v. Dole Food Co., Inc., et al.</i>
4.	BC403365	<i>Miguel Angel Mata Murillo, et al. v. Dole Food Co., Inc., et al.</i>
5.	BC403379	<i>Jose Isaac Rodriguez Diaz, et al. v. Dole Food Co., Inc., et al.</i>
6.	BC403366	<i>Jose Albino Villegas Mora, et al. v. Dole Food Co., Inc., et al.</i>
		<i>Guatemala</i>
7.	BC403375	<i>Antonio Abrego, et al. v. Dole Food Co., Inc., et al.</i>
8.	BC403367	<i>Regino Curin Lorenzo, et al. v. Dole Food Co., Inc., et al.</i>
9.	BC403376	<i>Mauricio Hicho, et al. v. Dole Food Co., Inc., et al.</i>
10.	BC403434	<i>Cosme Eladia Ortega Vanegas, et al. v. Dole Food Co., Inc., et al.</i>
11.	BC403377	<i>Angel Antonio Suchite Garcia, et al. v. Dole Food Co., Inc., et al.</i>
		<i>Honduras</i>
12.	BC403371	<i>Cesar Arnulfo Acosta, et al. v. Dole Food Co., Inc., et al.</i>
13.	BC403511	<i>Lucio Calidonio, et al. v. Dole Food Co., Inc., et al.</i>
14.	BC403507	<i>Marin Rafael Duenes, et al. v. Dole Food Co., Inc., et al.</i>
15.	BC403433	<i>Jairo Arnoldo Juarez Goden, et al. v. Dole Food Co., Inc., et al.</i>
16.	BC403372	<i>Reinaldo Alfonso Mendoza Bush, et al. v. Dole Food Co., Inc., et al.</i>
17.	BC403373	<i>Jose Saul Padilla, et al. v. Dole Food Co., Inc., et al.</i>

	Case No.	Name
18.	BC403508	<i>Luciano Rodriguez Rodriguez, et al. v. Dole Food Co., Inc., et al.</i>
19.	BC403374	<i>Roberto Ulloa, et al. v. Dole Food Co., Inc., et al.</i>
		<i>Panama</i>
20.	BC403431	<i>Alis Abdiel Arauz, et al. v. Dole Food Co., Inc., et al.</i>
21.	BC403515	<i>Gladys Alvarado Montenegro, et al. v. Dole Food Co., Inc., et al.</i>
22.	BC403432	<i>Estanilao Caballero, et al. v. Dole Food Co., Inc., et al.</i>
23.	BC403516	<i>Victor Chin Martinez, et al. v. Dole Food Co., Inc., et al.</i>
24.	BC403514	<i>Roberto Gonzalez, et al. v. Dole Food Co., Inc., et al.</i>
25.	BC403430	<i>Luis Hernandez Moreno, et al. v. Dole Food Co., Inc., et al.</i>
26.	BC403452	<i>David Masa Arauz, et al. v. Dole Food Company, Inc., et al.</i>
27.	BC403512	<i>Carlos Munoz Barria, et al. v. Dole Food Co., Inc., et al.</i>
28.	BC403506	<i>Narciso Pinedo, et al. v. Dole Food Co., Inc., et al.</i>
29.	BC403513	<i>Hugo Salino Valdes, et al. v. Dole Food Co., Inc., et al.</i>
30.	BC403362	<i>Edwin Solis Villareal, et al. v. Dole Food Co., Inc., et al.</i>

4. Under CAFA, “[t]he district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs, and is a class action in which . . . any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State.” 28 U.S.C. § 1332(d)(2)(B).

5. Also under CAFA, “a mass action shall be deemed to be a class action removable under paragraphs (2) through (10) if it otherwise meets the provisions of those paragraphs.” 28 U.S.C. § 1332(d)(11)(A). Here, each of these actions is properly removable under CAFA on the following grounds:



1 a. Collectively, there are more than 100 plaintiffs in these actions.  
 2 28 U.S.C. 1332(d)(11)(B)(i). More specifically, plaintiffs in these thirty cases  
 3 are 2,485 citizens of Panama, Costa Rica, Honduras, and Guatemala. There  
 4 are more than 100 plaintiffs from each country.<sup>1</sup>

5 b. A review of plaintiffs' identical complaints indicates that the total  
 6 "matter in controversy exceeds the sum or value of \$5,000,000, exclusive of  
 7 interest and costs," 28 U.S.C. § 1332(d)(2), and further indicates that the  
 8 matter in controversy for each plaintiff "exceeds the sum or value of \$75,000."  
 9 *Id.*; 28 U.S.C. § 1332(a); *see also Ellenberger v. Spartan Motors Chassis, Inc.*,  
 10 519 F.3d 192, 200 (4th Cir. 2008) (holding that it is "inappropriate for the  
 11 district court to have required a removing party's notice of removal to meet a  
 12 higher pleading standard than the one imposed on a plaintiff in drafting an  
 13 initial complaint."). Each plaintiff alleges that as a result of exposure to the  
 14 chemical pesticide DBCP, he "suffer[s] sterility and other serious injuries," Pl.  
 15 Cmpl. at ¶ 11, and seeks special, general and punitive damages, *Id.* at ¶¶ 110-  
 16 112. Thus, this Court has jurisdiction over each and every plaintiff because  
 17 each plaintiff satisfies the "jurisdictional amount requirements under  
 18 subsection (a)." 28 U.S.C. § 1332(d)(11)(B)(i).

19 c. Plaintiffs assert personal injury claims arising from their alleged  
 20 exposure to DBCP, as such, their claims involve common questions of law and  
 21 fact. 28 U.S.C. § 1332(d)(11)(B)(i); *see also, e.g.*, Pl. Cmpl. at ¶ 1.<sup>2</sup>

22 d. This is an action in which a least one of plaintiffs is a citizen or  
 23 subject of a foreign state and at least one defendant is a citizen of a State.  
 24 28 U.S.C. § 1332(d)(2)(B). More specifically:

25  
 26  
 27 <sup>1</sup> There are 461 plaintiffs from Costa Rica, 389 from Guatemala., 673 from Honduras, and  
 962 from Panama.

28 <sup>2</sup> Other than the names of the plaintiffs, the complaints are identical in all thirty actions.

1 i. Plaintiffs in these thirty actions are all citizens of Panama,  
2 Costa Rica, Honduras or Guatemala, *see, e.g.*, Pl. Cmpl. at ¶ 11;

3 ii. Defendant Dow Chemical is a Delaware corporation with its  
4 principal place of business in Midland, Michigan. *Id.* at 25.

5 e. Fewer than one-third of plaintiffs (indeed none of plaintiffs) are  
6 citizens of California. 28 U.S.C. 1332(d)(3). *Id.* at ¶ 11.

7 f. Fewer than two-thirds of plaintiffs (indeed none of plaintiffs) are  
8 citizens of California and none of their alleged injuries were incurred in this  
9 State. 28 U.S.C. 1332(d)(4). *Id.* at ¶¶ 6, 11.

10 6. The time within which Dow Chemical must file this Notice of Removal  
11 under 28 U.S.C. § 1446(b) has not expired. None of the defendants was served prior  
12 to December 10, 2008.

13 7. Under CAFA, the presence of citizens of this State as defendants does  
14 not preclude removal. 28 U.S.C. § 1453(b) (“A class action may be removed . . .  
15 without regard to whether any defendant is a citizen of the State in which the action  
16 is brought[.]”).

17 8. Under CAFA, a defendant may remove without the consent of all  
18 defendants. 28 U.S.C. § 1453(b) (“such action may be removed by any defendant  
19 without the consent of all defendants”).

20 9. Copies of all process, pleadings and orders served on defendants is  
21 attached as Exhibit A.

22 WHEREFORE, Dow Chemical respectfully prays that the Court take  
23 jurisdiction over this action in its entirety until its conclusion.



1  
2 DATED: January 8, 2009 FILICE BROWN EASSA & McLEOD LLP  
3  
4 and  
5 SCHIRRMESTER DIAZ-ARRASTIA BREM LLP

6 By: 

7 GENNARO A. FILICE III  
8 NICHOLAS D. KAYHAN  
9 RICHARD H. POULSON

10 and

11 MICHAEL L. BREM

12 Attorneys for Defendant  
13 THE DOW CHEMICAL COMPANY  
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# EXHIBIT A

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State, number, and address):

WALTER J. LACK, ESQ. (SBN 57550)

ENGSTROM, LIPSCOMB &amp; LACK

10100 SANTA MONICA BL, 12th FL, L.A., CA 90067

TELEPHONE NO.: 310-552-3800

FAX NO.: 310-552-9434

ATTORNEY FOR (Name): Plaintiffs, ACOSTA CORTES, et al.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

STREET ADDRESS: SUPERIOR COURT - CENTRAL

MAILING ADDRESS: 111 NORTH HILL STREET

CITY AND ZIP CODE: LOS ANGELES, CA 90012

BRANCH NAME: CENTRAL

CASE NAME: ACOSTA CORTES, et al. v. DOLE FOOD COMPANY, INC., et al.

**FILED**  
LOS ANGELES SUPERIOR COURT

DEC 8, 2008

JOHN A. CLARKE, CLERK

BY MARY GARCIA, DEPUTY

CASE NUMBER:

BC403364

JUDGE:

DEPT:

**CIVIL CASE COVER SHEET**
☒ **Unlimited**  
(Amount demanded exceeds \$25,000)
 ☐ **Limited**  
(Amount demanded is \$25,000 or less)
**Complex Case Designation**
☐ **Counter**
☐ **Joinder**

 Filed with first appearance by defendant  
(Cal. Rules of Court, rule 3.402)

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

**Auto Tort**
☐ Auto (22)  
☐ Uninsured motorist (46)
**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**
☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)
**Non-PI/PD/WD (Other) Tort**
☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)
**Employment**
☐ Wrongful termination (36)  
☐ Other employment (15)
**Contract**
☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)
**Real Property**
☐ Eminent domain/Inverse condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)
**Unlawful Detainer**
☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)
**Judicial Review**
☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)
**Provisionally Complex Civil Litigation**  
(Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☒ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
**Enforcement of Judgment**
☐ Enforcement of judgment (20)
**Miscellaneous Civil Complaint**
☐ RICO (27)  
☐ Other complaint (not specified above) (42)
**Miscellaneous Civil Petition**
☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)
2. This case ☒ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
 a. ☒ Large number of separately represented parties  
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve  
 c. ☒ Substantial amount of documentary evidence

 d. ☒ Large number of witnesses  
 e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 f. ☐ Substantial postjudgment judicial supervision
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive

4. Number of causes of action (specify): 9

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: December 8, 2008

Walter J. Lack, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

**INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET**

**To Plaintiffs and Others Filing First Papers.** If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

**To Parties in Rule 3.740 Collections Cases.** A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

**To Parties in Complex Cases.** In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

**CASE TYPES AND EXAMPLES****Auto Tort**

Auto (22)—Personal Injury/Property Damage/Wrongful Death  
Uninsured Motorist (46) *(If the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

**Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort**

Asbestos (04)  
Asbestos Property Damage  
Asbestos Personal Injury/Wrongful Death  
Product Liability *(not asbestos or toxic/environmental)* (24)  
Medical Malpractice (45)  
Medical Malpractice—Physicians & Surgeons  
Other Professional Health Care Malpractice  
Other PI/PD/WD (23)  
Premises Liability (e.g., slip and fall)  
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)  
Intentional Infliction of Emotional Distress  
Negligent Infliction of Emotional Distress  
Other PI/PD/WD

**Non-PI/PD/WD (Other) Tort**

Business Tort/Unfair Business Practice (07)  
Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)  
Defamation (e.g., slander, libel) (13)  
Fraud (16)  
Intellectual Property (19)  
Professional Negligence (25)  
Legal Malpractice  
Other Professional Malpractice *(not medical or legal)*  
Other Non-PI/PD/WD Tort (35)

**Employment**

Wrongful Termination (36)  
Other Employment (15)

**Contract**

Breach of Contract/Warranty (06)  
Breach of Rental/Lease  
Contract *(not unlawful detainer or wrongful eviction)*  
Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*  
Negligent Breach of Contract/Warranty  
Other Breach of Contract/Warranty  
Collections (e.g., money owed, open book accounts) (09)  
Collection Case—Seller Plaintiff  
Other Promissory Note/Collections Case  
Insurance Coverage *(not provisionally complex)* (18)  
Auto Subrogation  
Other Coverage  
Other Contract (37)  
Contractual Fraud  
Other Contract Dispute

**Real Property**

Eminent Domain/Inverse Condemnation (14)  
Wrongful Eviction (33)  
Other Real Property (e.g., quiet title) (26)  
Writ of Possession of Real Property  
Mortgage Foreclosure  
Quiet Title  
Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

**Unlawful Detainer**

Commercial (31)  
Residential (32)  
Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

**Judicial Review**

Asset Forfeiture (05)  
Petition Re: Arbitration Award (11)  
Writ of Mandate (02)  
Writ—Administrative Mandamus  
Writ—Mandamus on Limited Court Case Matter  
Writ—Other Limited Court Case Review  
Other Judicial Review (39)  
Review of Health Officer Order  
Notice of Appeal—Labor  
Commissioner Appeals

**Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)**

Antitrust/Trade Regulation (03)  
Construction Defect (10)  
Claims Involving Mass Tort (40)  
Securities Litigation (28)  
Environmental/Toxic Tort (30)  
Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

**Enforcement of Judgment**

Enforcement of Judgment (20)  
Abstract of Judgment (Out of County)  
Confession of Judgment *(non-domestic relations)*  
Sister State Judgment  
Administrative Agency Award *(not unpaid taxes)*  
Petition/Certification of Entry of Judgment on Unpaid Taxes  
Other Enforcement of Judgment Case

**Miscellaneous Civil Complaint**

RICO (27)  
Other Complaint *(not specified above)* (42)  
Declaratory Relief Only  
Injunctive Relief Only *(non-harassment)*  
Mechanics Lien  
Other Commercial Complaint Case *(non-tort/non-complex)*  
Other Civil Complaint *(non-tort/non-complex)*

**Miscellaneous Civil Petition**

Partnership and Corporate Governance (21)  
Other Petition *(not specified above)* (43)  
Civil Harassment  
Workplace Violence  
Elder/Dependent Adult Abuse  
Election Contest  
Petition for Name Change  
Petition for Relief From Late Claim  
Other Civil Petition

SHORT TITLE: ACOSTA CORTES, et al. v. DOLE FOOD COMPANY, INC., et al.	CASE NUMBER BC403364
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**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☐ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 90 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked "Limited Case", skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                 |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
<b>Auto Tort</b>	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
<b>Other Personal Injury/Property Damage/Wrongful Death Tort</b>	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage <input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2. 2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons <input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4. 1., 2., 4.
	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall) <input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.) <input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress <input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4. 1., 2., 4. 1., 2., 3. 1., 2., 4.
<b>Non-Personal Injury/Property Damage/Wrongful Death Tort</b>	Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.



Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: ACOSTA CORTES, et al. v. DOLE FOOD COMPANY, INC., et al.		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer- Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer- Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.



SHORT TITLE: ACOSTA CORTES, et al. v. DOLE FOOD COMPANY, INC., et al.	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex  
LitigationEnforcement  
of JudgmentMiscellaneous Civil  
Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input checked="" type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

SHORT TITLE: ACOSTA CORTES, et al. v. DOLE FOOD COMPANY, INC., et al.	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE  <input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input checked="" type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.		ADDRESS: One Dole Dr.	
CITY: Westlake Village	STATE: CA	ZIP CODE: 91362	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Los Angeles courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: December 8, 2008



(SIGNATURE OF ATTORNEY FILING PARTY)

Walter J. Lack, Esq.

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

# SUMMONS (CITACION JUDICIAL)

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

DOLE FOOD COMPANY, INC.; DOLE FRESH FRUIT COMPANY;  
CHIQUITA BRANDS COMPANY, NORTH AMERICA; CHIQUITA  
BRANDS, INC.; (SEE ATTACHMENT FOR ADDITIONAL  
DEFENDANTS)

## YOU ARE BEING SUED BY PLAINTIFF:

### (LO ESTÁ DEMANDANDO EL DEMANDANTE):

JORGE ACOSTA CORTES; ANTONIO ACUNA AGÜERO; GERARDO  
ACUNA MURILLO; JAVIER RAMON AGUERO ARTAVIA; (SEE  
ATTACHMENT FOR ADDITIONAL PLAINTIFFS)

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**FILED**

LOS ANGELES SUPERIOR COURT

DEC 8, 2008

JOHN A. CLARKE, CLERK

BY MARY GARCIA, DEPUTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/selfhelp/espanol/](http://www.courtinfo.ca.gov/selfhelp/espanol/)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):  
SUPERIOR COURT - CENTRAL  
111 NORTH HILL STREET

LOS ANGELES, CA 90012

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
WALTER J. LACK, SBN 57550 310-552-3800

ENGSTROM, LIPSCOMB & LACK

10100 SANTA MONICA BL, 12th FL, L.A., CA 90067

DATE:

(Fecha) DEC 08 2008

Clerk, by

(Secretario)

M. GARCIA, Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons form (POS-010).)

(Para prueba de entrega de esta citación, use el formulario de Prueba de Entrega de Citación, (POS-010)).

## NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):



SUM-200(A)

## SHORT TITLE:

ACOSTA CORTES, ET AL. v. DOLE FOOD COMPANY, INC., ET AL.

CASE NUMBER:

## INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff    ☒ Defendant    ☐ Cross-Complainant    ☐ Cross-Defendant

CHIQUITA BRANDS INTERNATIONAL, INC.;  
 DEL MONTE FRESH PRODUCE N.A., INC.;  
 DEL MONTE FRESH PRODUCE, INC.;  
 DEL MONTE FRESH PRODUCE (WEST COAST), INC.;  
 SHELL CHEMICAL COMPANY;  
 SHELL OIL COMPANY;  
 THE DOW CHEMICAL COMPANY;  
 OCCIDENTAL PETROLEUM CORPORATION;  
 OCCIDENTAL CHEMICAL COMPANY;  
 OCCIDENTAL CHEMICAL CORPORATION;  
 and DOES 1 through 100, Inclusive.

Page 1 of 4

Page 1 of 1

**ACOSTA CORTES, ET AL. V. DOLE FOOD CO., INC., ET AL.**  
**ADDITIONAL PARTIES ATTACHMENT**  
**Attachment to Summons**

**List of Additional Plaintiffs:**

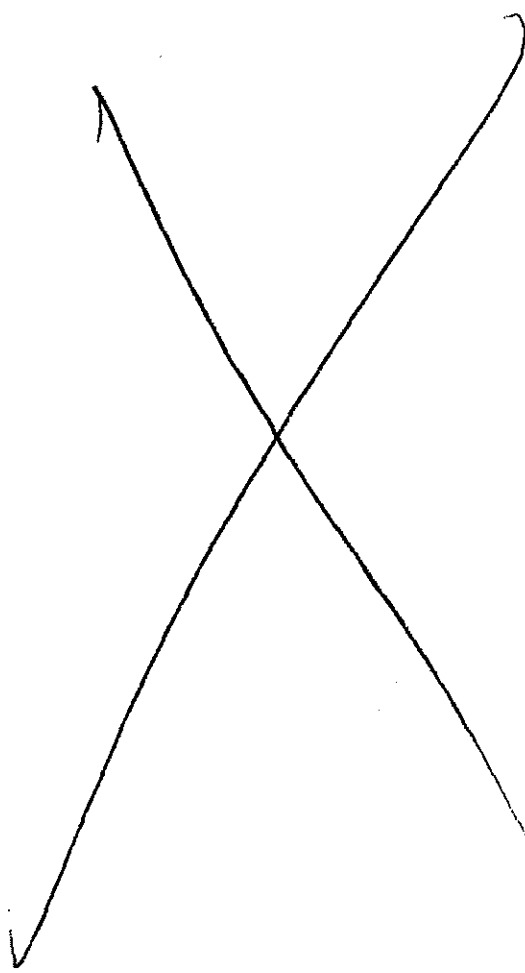
TEODORO AGUERO MORA;  
VICTOR HUGO AGUILAR CESPEDES;  
JOSE JOAQUIN AGUILAR MONTERO;  
OSCAR AGUILAR MORA;  
ALBINO AGUILAR SOLANO;  
JOSE SIMON AGUIRRE AGUIRRE;  
JOSE FRANCISCO AGUIRRE AGUIRRE;  
ALFONSO AGUIRRE VILLAGRA;  
SANTOS VIANNEY AGUIRRE ZUNIGA;  
CLEMENTE ALVARADO RIOS;  
ALCIDES ALVARADO ZAMORA;  
ANGEL JULIAN ALVAREZ AGUIRRE;  
ANTONIO ALVAREZ ALVAREZ;  
LUIS ANTONIO ALVAREZ ALVAREZ;  
JESUS ALVAREZ BUSTOS;  
SIGIFREDO ALVAREZ DIAZ;  
ROQUE ALVAREZ MORALES;  
HERNAN ALVAREZ ROSALES;  
GIOVANNI ALVAREZ RUIZ;  
VICTOR MANUEL ALVAREZ VILLATORO;  
JOSE ELVIS ANGULO ANGULO;  
FERNANDO ARAGON MIRANDA;  
SERGIO ARAGON MIRANDA;  
CRISTOBAL ALBERTO ARAGON RUGAMA;  
MARVIN ARAYA ALVAREZ;  
JOSE ANGEL ARAYA BOLANOS;  
CLAUDIO ARAYA HERNANDEZ;  
JUAN ARAYA ORTEGA;  
BENEDICTO ARAYA ROJAS;  
JOSE DONALDO ARCE BEJARANO;  
VICTOR JULIO ARCE QUESADA;  
ELIECER ARCE RETANA;  
VICTOR ARGUEDAS MUNOZ;  
VIDAL ARIAS AVILA;  
GILBERTO ARIAS MEZA;  
HERMINIO ARIAS PANIAGUA;

BIENVENIDO ARIAS SOLANO;  
EDUARDO ARIAS VILLALOBOS;  
RAFAEL ANTONIO AVILA CAMBRONERO;  
HUGO AVILES JUAREZ;  
RICARDO ALBERTO BALDELOMAR BALDELOMAR;  
EDUARDO FAUSTO BALTODANO BALTODANO;  
VIRGILIO BALTODANO DIAZ;  
MERIDO BALTODANO DIAZ;  
JOSE MARVIN BALTODANO ZUNIGA;  
ALFONSO BARAHONA FONSECA;  
OLIVER GERARDO BARAHONA FONSECA;  
HUGO BARBOZA FERNANDEZ;  
AMALIO BARBOZA MENDOZA;  
JOSE FRANCISCO BARQUERO BARQUERO;  
JESUS MARIA BARQUERO CAMPOS;  
CARLOS LUIS BARQUERO PICADO;  
CARLOS LUIS BARRIOS BARRIOS;  
LUIS ALVARO BENAVIDES ESQUIVEL;  
JOVEL BERROCAL CHINCHILLA;  
GABRIEL BERROCAL JIMENEZ;  
FRANCISCO BOJORGE APU;  
AGUSTIN BOLANOS MONTOYA;  
GERVASIO BOLANOS MONTOYA;  
RIGOBERTO BOLIVAR SILES;  
RAFAEL BONILLA MADRIGAL;  
SILVERIO BONILLA ZUNIGA;  
HERIBERTO BRAVO HERNANDEZ;  
JOSE BRENES CISNEROS;  
JESUS FRANCISO BRENES CRUZ;  
ALEJANDRO BRENES GUEVARA;  
EDWIN BRENES LEON;  
CESAR AURELIO BRENES MARTINEZ;  
EDGAR BRENES MORA;  
REMBERTO BRICENO MACOTELO;  
BENEDICTO BRIONES GARCIA;  
JOSE LEON BRIONES RANGEL;  
JOSE GREGORIO BUZANO VEGA;  
JOSE LUIS CALDERON BARBOZA;  
OLDEMAR CALDERON SOLANO;  
MELVIN CALVO VARGAS;  
RAFAEL ANGEL CAMBRONERO GUERRERO;  
JOSE ALBERTO CAMPOS CAMPOS;  
FRANCISCO CAMPOS ZUMBADO;



RODOLFO CARBALLO BARRIENTOS;  
MARIANO CARBALLO VARGAS;  
JOSE LIDIER CARDENAS GARCIA;  
JUAN PABLO CARRILLO CARRILLO;  
FELIX CARRILLO MATARRITA;  
CAMILO CARRILLO MATARRITA;  
FRANCISCO CARRILLO OBREGON.

309393.1



WALTER J. LACK (State Bar No. 57550)  
 ELIZABETH L. CROOKE (State Bar No. 90305)  
 ANN A. HOWITT (State Bar No. 169497)  
**ENGSTROM, LIPSCOMB & LACK**  
 10100 Santa Monica Boulevard, 12th Floor  
 Los Angeles, California 90067  
 Tel: (310) 552-3800 / Fax: (310) 552-9434

JOE J. FISHER II (*Appearing Pro Hac Vice*)  
 MARK SPARKS (*Appearing Pro Hac Vice*)  
**PROVOST\*UMPHREY LAW FIRM**  
 P.O. Box 4905  
 Beaumont, TX 77704  
 Tel: (409) 835-6000 / Fax: (409) 838-8888

Attorneys for Plaintiffs

**FILED**  
 LOS ANGELES SUPERIOR COURT

DEC 8, 2008 C'D

DEC 8 - 2008  
 JOHN A. CLARKE, CLERK  
 BY MARY GARCIA, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 FOR THE COUNTY OF LOS ANGELES**

JORGE ACOSTA CORTES; ANTONIO  
 ACUNA AGÜERO; GERARDO ACUNA  
 MURILLO; JAVIER RAMON AGUERO  
 ARTAVIA; TEODORO AGUERO MORA;  
 VICTOR HUGO AGUILAR CESPEDES;  
 JOSE JOAQUIN AGUILAR MONTERO;  
 OSCAR AGUILAR MORA; ALBINO  
 AGUILAR SOLANO; JOSE SIMON  
 AGUIRRE AGUIRRE; JOSE FRANCISCO  
 AGUIRRE AGUIRRE; ALFONSO AGUIRRE  
 VILLAGRA; SANTOS VIANNEY  
 AGUIRRE ZUNIGA; CLEMENTE  
 ALVARADO RIOS; ALCIDES ALVARADO  
 ZAMORA; ANGEL JULIAN ALVAREZ  
 AGUIRRE; ANTONIO ALVAREZ  
 ALVAREZ; LUIS ANTONIO ALVAREZ  
 ALVAREZ; JESUS ALVAREZ BUSTOS;  
 SIGIFREDO ALVAREZ DIAZ; ROQUE  
 ALVAREZ MORALES; HERNAN  
 ALVAREZ ROSALES; GIOVANNI  
 ALVAREZ RUIZ; VICTOR MANUEL  
 ALVAREZ VILLATORO; JOSE ELVIS  
 ANGULO ANGULO; FERNANDO  
 ARAGON MIRANDA; SERGIO ARAGON  
 MIRANDA; CRISTOBAL ALBERTO  
 ARAGON RUGAMA; MARVIN ARAYA  
 ALVAREZ; JOSE ANGEL ARAYA  
 BOLANOS; CLAUDIO ARAYA  
 HERNANDEZ; JUAN ARAYA ORTEGA;  
 BENEDICTO ARAYA ROJAS; JOSE  
 DONALDO ARCE BEJARANO; VICTOR  
 JULIO ARCE QUESADA; ELIECER ARCE

CASE NO.: **BC403364**

**COMPLAINT FOR:**

- 1) PRODUCTS LIABILITY-  
NEGLIGENCE;
- 2) STRICT PRODUCTS LIABILITY;
- 3) PRODUCTS LIABILITY - DEFECT  
IN DESIGN, MANUFACTURE,  
AND CHEMICAL COMPOSITION;
- 4) PRODUCTS LIABILITY - BREACH  
OF WARRANTY;
- 5) FRAUDULENT MANAGEMENT;
- 6) INTENTIONAL  
MISREPRESENTATION;
- 7) FRAUD BY CONCEALMENT;
- 8) GENERAL NEGLIGENCE; AND
- 9) CONSPIRACY

CT/CASE: BC403364 LEA/DEF#: \_\_\_\_\_  
 RECEIPT #: CCH478057008  
 DATE PAID: 12/09/08 09:11:23 AM  
 PAYMENT: \$870.00  
 RECEIVED: \_\_\_\_\_  
 CHECK: 870.00  
 CASH: \_\_\_\_\_  
 CHANGE: \_\_\_\_\_  
 CARD: \_\_\_\_\_

1 RETANA; VICTOR ARGUEDAS MUNOZ;  
 2 VIDAL ARIAS AVILA; GILBERTO ARIAS  
 3 MEZA; HERMINIO ARIAS PANIAGUA;  
 4 BIENVENIDO ARIAS SOLANO;  
 5 EDUARDO ARIAS VILLALOBOS;  
 6 RAFAEL ANTONIO AVILA  
 7 CAMBRONERO; HUGO AVILES JUAREZ;  
 8 RICARDO ALBERTO BALDELOMAR  
 9 BALDELOMAR; EDUARDO FAUSTO  
 10 BALTODANO BALTODANO; VIRGILIO  
 11 BALTODANO DIAZ; MERIDO  
 12 BALTODANO DIAZ; JOSE MARVIN  
 13 BARAHONA FONSECA; OLIVER  
 14 GERARDO BARAHONA FONSECA; HUGO  
 15 BARBOZA FERNANDEZ; AMALIO  
 16 BARBOZA MENDOZA; JOSE FRANCISCO  
 17 BARQUERO BARQUERO; JESUS MARIA  
 18 BARQUERO CAMPOS; CARLOS LUIS  
 19 BARQUERO PICADO; CARLOS LUIS  
 20 BARRIOS BARRIOS; LUIS ALVARO  
 21 BENAVIDES ESQUIVEL; JOVEL  
 22 BERROCAL CHINCHILLA; GABRIEL  
 23 BERROCAL JIMENEZ; FRANCISCO  
 24 BOJORGE APU; AGUSTIN BOLANOS  
 25 MONTOYA; GERVASIO BOLANOS  
 26 MONTOYA; RIGOBERTO BOLIVAR  
 27 SILES; RAFAEL BONILLA MADRIGAL;  
 28 SILVERIO BONILLA ZUNIGA;  
 HERIBERTO BRAVO HERNANDEZ; JOSE  
 BRENES CISNEROS; JESUS FRANCISO  
 BRENES CRUZ; ALEJANDRO BRENES  
 GUEVARA; EDWIN BRENES LEON;  
 CESAR AURELIO BRENES MARTINEZ;  
 EDGAR BRENES MORA; REMBERTO  
 BRICENO MACOTELO; BENEDICTO  
 BRIONES GARCIA; JOSE LEON BRIONES  
 RANGEL; JOSE GREGORIO BUZANO  
 VEGA; JOSE LUIS CALDERON  
 BARBOZA; OLDEMAR CALDERON  
 SOLANO; MELVIN CALVO VARGAS;  
 RAFAEL ANGEL CAMBRONERO  
 GUERRERO; JOSE ALBERTO CAMPOS  
 CAMPOS; FRANCISCO CAMPOS  
 ZUMBADO; RODOLFO CARBALLO  
 BARRIENTOS; MARIANO CARBALLO  
 VARGAS; JOSE LIDIER CARDENAS  
 GARCIA; JUAN PABLO CARRILLO  
 CARRILLO; FELIX CARRILLO  
 MATARRITA; CAMILO CARRILLO  
 MATARRITA; FRANCISCO CARRILLO  
 OBREGON,

Plaintiffs,

1 vs.

2 DOLE FOOD COMPANY, INC.;  
 3 DOLE FRESH FRUIT COMPANY;  
 4 CHIQUITA BRANDS COMPANY, NORTH  
 5 AMERICA; CHIQUITA BRANDS, INC.;  
 6 CHIQUITA BRANDS INTERNATIONAL,  
 7 INC.; DEL MONTE FRESH PRODUCE N.A.,  
 8 INC.; DEL MONTE FRESH PRODUCE,  
 9 INC.; DEL MONTE FRESH PRODUCE  
 10 (WEST COAST), INC.;  
 11 SHELL CHEMICAL COMPANY;  
 12 SHELL OIL COMPANY; THE DOW  
 13 CHEMICAL COMPANY; OCCIDENTAL  
 14 PETROLEUM CORPORATION;  
 15 OCCIDENTAL CHEMICAL COMPANY;  
 16 OCCIDENTAL CHEMICAL  
 17 CORPORATION, and DOES 1 through 100,  
 18 Inclusive,

19 Defendants.

20 COMES NOW Plaintiffs and bring this action against the Defendants, DOLE FOOD  
 21 COMPANY, INC.; DOLE FRESH FRUIT COMPANY, CHIQUITA BRANDS COMPANY,  
 22 NORTH AMERICA; CHIQUITA BRANDS, INC; CHIQUITA BRANDS INTERNATIONAL,  
 23 INC.; DEL MONTE FRESH PRODUCE, INC., DEL MONTE FRESH PRODUCE N.A., INC.,  
 24 DEL MONTE FRESH PRODUCE (WEST COAST), INC.; SHELL OIL COMPANY (AND  
 25 SHELL OIL USA), SHELL CHEMICAL COMPANY; THE DOW CHEMICAL COMPANY,  
 26 OCCIDENTAL PETROLEUM COMPANY, OCCIDENTAL CHEMICAL COMPANY and  
 27 OCCIDENTAL CHEMICAL CORPORATION; and DOES 1 through 100, inclusive, and allege  
 28 as follows:

#### 29 NATURE OF THE CASE

30 1. This lawsuit is brought by Plaintiffs, who were injured by exposure to 1, 2-  
 31 dibromo-3-chloropropane ("DBCP"), a highly toxic chemical pesticide, which was also sold  
 32 under the brand names "Nemagon" and "Fumazone", designed, manufactured, marketed,  
 33 distributed and sold by SHELL OIL COMPANY (AND SHELL OIL USA), SHELL

1 CHEMICAL COMPANY, THE DOW CHEMICAL COMPANY, OCCIDENTAL  
 2 PETROLEUM CORPORATION, OCCIDENTAL CHEMICAL COMPANY and  
 3 OCCIDENTAL CHEMICAL CORPORATION, (collectively, "CHEMICAL DEFENDANTS").  
 4  
 5 CHEMICAL DEFENDANTS are some of the nation's largest chemical manufacturers,  
 6 producing within the borders of the United States, in excess of 80% of all chemicals used in the  
 7 United States and abroad. This lawsuit is brought by Plaintiffs who were injured by the release  
 8 of DBCP into the environment as a result of the operation of banana plantation farms in Central  
 9 America by DOLE FOOD COMPANY, INC., DOLE FRESH FRUIT COMPANY, CHIQUITA  
 10 BRANDS COMPANY, NORTH AMERICA; CHIQUITA BRANDS, INC., CHIQUITA  
 11 BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE (WEST COAST)  
 12 INC.; DEL MONTE FRESH PRODUCE, INC. and DEL MONTE FRESH PRODUCE N.A.,  
 13 INC.; (collectively, "BANANA FARM DEFENDANTS").  
 14

15  
 16 2. At all relevant times, Plaintiffs were workers on banana plantation farms owned,  
 17 managed, administered, or controlled by BANANA FARM DEFENDANTS, located in and  
 18 around Costa Rica.

19  
 20 3. During those years, the above-mentioned plantation farms were owned, managed,  
 21 administered, controlled or managed by BANANA FARM DEFENDANTS, with the  
 22 administration realized by their officials and administrators from the United States under  
 23 agreements executed with the landlords of those above-mentioned plantation farms. The  
 24 managers presided over the work of the Plaintiffs, who handled the harvesting and cropping of  
 25 the banana production, a comprehensive process that included planting banana trees; work and  
 26 labor activities for the application of fertilizers and pesticides; and the fumigation, harvesting,  
 27  
 28

1 and packaging of the final banana product in boxes and bags for exportation to, and sale in,  
2 foreign countries.

3  
4 4. Plaintiffs, as daily workers on the banana plantation farms, were exposed to  
5 DBCP, designed, manufactured, marketed, distributed, and sold in and from the United States by  
6 CHEMICAL DEFENDANTS. DBCP is a highly toxic and poisonous pesticide which has been  
7 alleged to cause sterility, testicular atrophy, miscarriages, congenital reproductive outcomes,  
8 liver damage and various forms of cancer in humans when absorbed by the skin or inhaled. The  
9 pesticide was sold under its generic name, DBCP, and the brand names Nemagon – designed,  
10 manufactured, marketed, distributed and sold by SHELL OIL COMPANY, SHELL CHEMICAL  
11 COMPANY, OCCIDENTAL PETROLEUM CORPORATION, OCCIDENTAL CHEMICAL  
12 COMPANY and OCCIDENTAL CHEMICAL CORPORATION – and Fumazone – designed,  
13 manufactured, marketed, distributed, and sold by THE DOW CHEMICAL COMPANY,  
14 OCCIDENTAL PETROLEUM CORPORATION, OCCIDENTAL CHEMICAL COMPANY  
15 and OCCIDENTAL CHEMICAL CORPORATION. The pesticide was banned from general use  
16 in the United States by the Environmental Protection Agency (“EPA”) in 1979, but CHEMICAL  
17 DEFENDANTS continued to distribute DBCP to BANANA FARM DEFENDANTS for use on  
18 banana plantation farms in Central America, including those specifically mentioned herein and  
19 others in Costa Rica.  
20  
21  
22

23 5. Plaintiffs are informed and believe and, on that basis, herein alleged that  
24 CHEMICAL DEFENDANTS did not utilize due care when continuing to distribute DBCP from  
25 the United States to banana plantation farms in Costa Rica. Plaintiffs are informed and believe  
26 and, on that basis, herein allege that CHEMICAL DEFENDANTS knowingly and willfully  
27 distributed DBCP after receiving notice of its ban in the United States by the EPA and its highly  
28



1 toxic effects, particularly its causing sterility. In addition, Plaintiffs are informed and believe  
 2 and, on that basis, herein alleged that BANANA FARM DEFENDANTS knowingly and  
 3 willfully exposed Plaintiffs to DBCP and its highly toxic effects after receiving notice of its ban  
 4 in the United States by the EPA. CHEMICAL DEFENDANTS eventually ceased distribution of  
 5 DBCP to plantation farms, and BANANA FARM DEFENDANTS eventually ceased application  
 6 of DBCP at such plantation farms. After such distribution and application ceased, however, the  
 7 Plaintiffs suffered physical and mental injuries as a result of their exposure to DBCP.  
 8

9  
 10 6. Plaintiffs were exposed to DBCP designed, manufactured, marketed, distributed,  
 11 sold, or purchased by DEFENDANTS for application on banana plantation farms throughout  
 12 Central America, including those specifically mentioned herein and others in and around Costa  
 13 Rica. As a result of this exposure to DBCP, Plaintiffs suffered serious injuries.

#### 14 JURISDICTION AND VENUE

15  
 16 7. This Court has jurisdiction over this matter based on the fact that Defendant,  
 17 DOLE FOOD COMPANY, INC., at all times relevant hereto, had its principal places of business  
 18 in Los Angeles County, California, in which the decision makers for said BANANA FARM  
 19 DEFENDANT conduct and oversee its daily affairs.

20  
 21 8. Remaining DEENDANTS are properly joined in this action under the California  
 22 Rules of Civil Procedure. The claims against DOLE FRESH FRUIT COMPANY, CHIQUITA  
 23 BRANDS COMPANY, NORTH AMERICA; CHIQUITA BRANDS, INC; CHIQUITA  
 24 BRANDS INTERNATIONAL, INC.; DEL MONTE FRESH PRODUCE, INC., DEL MONTE  
 25 FRESH PRODUCE N.A., INC., DEL MONTE FRESH PRODUCE (WEST COAST), INC.;  
 26 SHELL OIL COMPANY (AND SHELL OIL USA), SHELL CHEMICAL COMPANY; THE  
 27 DOW CHEMICAL COMPANY, OCCIDENTAL PETROLEUM COMPANY, OCCIDENTAL  
 28

1 CHEMICAL COMPANY and OCCIDENTAL CHEMICAL CORPORATION arise out of the  
2 same transaction, occurrence, or series of transactions or occurrences as the claims against  
3 DOLE FOOD COMPANY, INC., and, all of which conduct business within this State and  
4 County.  
5

6 9. Without reference to punitive damages, the amount in controversy in  
7 compensatory damages for each Plaintiff exceeds the minimum jurisdictional limits of this  
8 Court, exclusive of interest and costs.

9  
10 10. Pursuant to California Civil Procedure Code, Section 395.5, venue in the Superior  
11 Court of Los Angeles County is proper. The principal place of business of DOLE FOOD  
12 COMPANY, INC., at all times relevant hereto, was situated in Los Angeles County.  
13 Specifically, DOLE FOOD COMPANY, INC. caused tortuous injury by acts or omissions  
14 associated with the design, manufacture, marketing, distribution, or sale of DBCP from its  
15 principal places of business in this County, as well as its decision from this County directing the  
16 control of banana plantation farms in and around Costa Rica affecting the Plaintiffs and their  
17 exposure to the harmful pesticides.  
18

19 **PARTIES**

20  
21 11. Individual Plaintiffs, are, and were at all times relevant hereto, residents of  
22 COSTA RICA. For the convenience of the Court and parties, the Plaintiffs are listed in  
23 alphabetical order in the Appendix hereto, which is incorporated into this petition as if set forth  
24 fully herein. Plaintiffs were banana workers on the BANANA FARM DEFENDANTS'  
25 plantation farms. During the course of Plaintiffs' work, Plaintiffs applied DBCP designed,  
26 manufactured, marketed, distributed, sold, or purchased by DEFENDANTS on the BANANA  
27 FARM DEFENDANTS' plantations in order to aid and stimulate banana production. The DBCP  
28

1 applied by Plaintiffs was toxic, therefore causing Plaintiffs to suffer sterility and other serious  
2 injuries.

3  
4 12. **DEFENDANT, DOLE FOOD COMPANY, INC.**, is, and was at all times  
5 relevant hereto, a Delaware corporation with its principal place of business in Los Angeles  
6 County, California. At all times relevant herein, DOLE FOOD COMPANY, INC., or its agents,  
7 purchased DBCP from CHEMICAL DEFENDANTS for application on banana plantation farms  
8 throughout Central America, including farms in Costa Rica, after it had been banned from  
9 general use in the United States by the EPA.  
10

11 13. **DEFENDANT, DOLE FRESH FRUIT COMPANY**, is, and was at all times  
12 relevant hereto, a Nevada corporation with its principal place of business in Los Angeles County,  
13 California. At all times relevant herein, DOLE FRESH FRUIT COMPANY, or its agents,  
14 purchased DBCP from CHEMICAL DEFENDANTS for application on banana plantation farms  
15 throughout Central America, including farms in Costa Rica, after it had been banned from  
16 general use in the United States by the EPA.  
17

18 14. **DEFENDANT, CHIQUITA BRANDS COMPANY, NORTH AMERICA**, is  
19 and was at all times relevant hereto, a Delaware corporation, with its principal place of business  
20 in Hamilton County, Ohio. CHIQUITA BRANDS COMPANY, NORTH AMERICA is a multi-  
21 national corporation that conducts its business throughout the world, including California and  
22 Costa Rica. At all relevant times herein, CHIQUITA BRANDS COMPANY, NORTH  
23 AMERICA or its agents, purchased DBCP from CHEMICAL DEFENDANTS for application on  
24 banana plantation farms throughout Central America, including farms in Costa Rica, after it had  
25 been banned from general use in the United States by the EPA.  
26  
27

28 15. **DEFENDANT, CHIQUITA BRANDS, INC.** is and was at all times relevant

1 hereto, a Delaware corporation, with its principal place of business in Hamilton County, Ohio.  
2 CHIQUITA BRANDS, INC. is a multi-national corporation that conducts its business  
3 throughout the world, including California and Costa Rica. At all relevant times herein,  
4 CHIQUITA BRANDS, INC. or its agents, purchased DBCP from CHEMICAL DEFENDANTS  
5 for application on banana plantation farms throughout Central America, including farms in Costa  
6 Rica, after it had been banned from general use in the United States by the EPA.  
7

8 16. **DEFENDANT, CHIQUITA BRANDS INTERNATIONAL, INC.** is and was  
9 at all times relevant hereto, a Delaware corporation, with its principal place of business in  
10 Hamilton County, Ohio. CHIQUITA BRANDS INTERNATIONAL, INC. is a multi-national  
11 corporation that conducts its business throughout the world, including California and Costa Rica.  
12 At all relevant times herein, CHIQUITA BRANDS INTERNATIONAL, INC. or its agents,  
13 purchased DBCP from CHEMICAL DEFENDANTS for application on banana plantation farms  
14 throughout Central America, including farms in Costa Rica, after it had been banned from  
15 general use in the United States by the EPA.  
16  
17

18 17. **DEFENDANT, DEL MONTE FRESH PRODUCE N.A., INC.,** is, and was at  
19 all times relevant hereto, a Florida corporation with its principal place of business in Coral  
20 Gables, Florida. At all times relevant herein, DEL MONTE FRESH PRODUCE N.A., INC., or  
21 its agents, purchased DBCP from CHEMICAL DEFENDANTS for application on banana  
22 plantation farms throughout Central America, including farms in Costa Rica, after it had been  
23 banned from general use in the United States by the EPA.  
24

25 18. **DEFENDANT, DEL MONTE FRESH PRODUCE, INC.** is, and was at all  
26 times relevant hereto, a California corporation with its principal place of business in the County  
27 of San Francisco, California. At all times relevant herein, DEL MONTE FRESH PRODUCE,  
28

1 INC., or its agents, purchased DBCP from CHEMICAL DEFENDANTS for application on  
2 banana plantation farms throughout Central America, including farms in Costa Rica, after it had  
3 been banned from general use in the United States by the EPA.  
4

5 19. **DEFENDANT, DEL MONTE FRESH PRODUCE (WEST COAST), INC.,**  
6 is, and was at all times relevant hereto, a Delaware corporation with its principal place of  
7 business in the County of San Francisco, California. At all times relevant herein, DEL MONTE  
8 FRESH PRODUCE (WEST COAST), INC., or its agents, purchased DBCP from CHEMICAL  
9 DEFENDANTS for application on banana plantation farms throughout Central America,  
10 including farms in Costa Rica, after it had been banned from general use in the United States by  
11 the EPA.  
12

13 20. **DEFENDANT, SHELL CHEMICAL COMPANY** is, and was at all times  
14 relevant hereto, a Delaware corporation, with its principal place of business in Harris County,  
15 Texas. SHELL CHEMICAL COMPANY is a multi-national corporation that conducts its  
16 business throughout the world, including California and Costa Rica. At all times relevant herein,  
17 SHELL CHEMICAL COMPANY or its agents, manufactured, distributed, marketed and sold  
18 DBCP for use on banana plantation farms throughout Central America, including farms in Costa  
19 Rica, to BANANA FARM DEFENDANTS after it had been banned in the United States by the  
20 EPA.  
21

22 21. **DEFENDANT, SHELL OIL COMPANY** is, and was at all times relevant  
23 hereto, a Delaware corporation, with its principal place of business in Harris County, Texas.  
24 SHELL OIL COMPANY is a multi-national corporation that conducts its business throughout  
25 the world, including California and Costa Rica. At all times relevant herein, SHELL OIL  
26 COMPANY or its agents, manufactured, distributed, marketed and sold DBCP for use on  
27  
28

1 banana plantation farms throughout Central America, including farms in Costa Rica, to  
2 BANANA FARM DEFENDANTS after it had been banned in the United States by the EPA.

3           22.     **DEFENDANT, OCCIDENTAL PETROLEUM CORPORATION**

4  
5 (“Occidental Petroleum”), individually and doing business as Occidental Chemical Company, is  
6 a California corporation, with its principal place of business in Los Angeles.

7           23.     **DEFENDANT, OCCIDENTAL CHEMICAL COMPANY**, was at one time an  
8 operating division of Occidental Petroleum Corporation. Thereafter Occidental Chemical  
9 Company was a California corporation, with its principal place of business located in Lathrop,  
10 California. This corporation’s name was changed to Occidental Chemical Agricultural Products,  
11 Inc. and then merged into Occidental Chemical Corporation.

12  
13           24.     **DEFENDANT, OCCIDENTAL CHEMICAL CORPORATION**, was at all  
14 times relevant herein a New York corporation, with its principal place of business located in  
15 Dallas, Texas.

16  
17           25.     **DEFENDANT, THE DOW CHEMICAL COMPANY** is, and was at all times  
18 relevant hereto, a Delaware corporation, with its principal place of business in Midland,  
19 Michigan. THE DOW CHEMICAL COMPANY is a multi-national corporation that conducts  
20 its business throughout the world, including California and Costa Rica. At all times relevant  
21 herein, THE DOW CHEMICAL COMPANY or its agents, manufactured, distributed, marketed  
22 and sold DBCP for use on banana plantation farms throughout Central America, including farms  
23 in Costa Rica, to BANANA FARM DEFENDANTS after it had been banned in the United  
24 States by the EPA.

25  
26           26.     Except as described herein, Plaintiffs are ignorant of the true names of  
27 DEFENDANTS sued as DOES 1 through 100, inclusive, and the nature of their wrongful  
28



1 conduct, and therefore sue these DOE DEFENDANTS by such fictitious names. Such DOE  
2 DEFENDANTS knowingly aided and participated in DEFENDANTS wrongful conduct  
3 complained of herein. Plaintiffs will seek leave of the Court to amend this Complaint to allege  
4 their true names and capacities when ascertained.  
5

6 **FACTUAL ALLEGATIONS**

7 27. CHEMICAL DEFENDANTS are the primary manufacturers and distributors of  
8 chemical products in the United States. CHEMICAL DEFENDANTS designed and  
9 manufactured all of the DBCP sold to BANANA FARM DEFENDANTS at the respective  
10 chemical plants in the United States. CHEMICAL DEFENDANTS were aware that the EPA  
11 banned DBCP from general use in the United States in 1979. Regardless of such adverse facts,  
12 CHEMICAL DEFENDANTS continued to distribute and sell DBCP to BANANA FARM  
13 DEFENDANTS for application on banana plantation farms specifically mentioned herein and  
14 others in Costa Rica after the ban had been instituted.  
15  
16

17 28. In 1957 or earlier, CHEMICAL DEFENDANTS had reason to question the  
18 operational integrity of the DBCP design and distribution system. At or about the same time,  
19 CHEMICAL DEFENDANTS found evidence that exposure to DBCP caused testicular atrophy  
20 in laboratory animals. Regardless of such findings, DBCP continued to be manufactured and  
21 distributed throughout the United States and abroad. CHEMICAL DEFENDANTS were not able  
22 to correct the above-mentioned problem and continued testing began to show testicular problems  
23 in humans as well; including all human workers at the CHEMICAL DEFENDANTS' facilities.  
24 After the EPA banned DBCP from general use in the United States in 1979, DEFENDANTS  
25 continued designing, marketing, manufacturing, distributing, selling or purchasing DBCP for  
26  
27  
28

1 application on plantation farms throughout Costa Rica despite the serious dangers it posed to  
2 humans.

3         29. On or about July, 1961, the Pesticide Regulations Branch of the U.S. Department  
4 of Agriculture ("USDA") advised CHEMICAL DEFENDANTS, SHELL OIL COMPANY and  
5 SHELL CHEMICAL COMPANY to place extensive precautionary warning labels on its  
6 Nemagon barrels. The USDA also requested health records of those plant workers who had been  
7 employed for an extended period in the manufacture or formulation of products containing  
8 DBCP. CHEMICAL DEFENDANTS, SHELL OIL COMPANY and SHELL CHEMICAL  
9 COMPANY dismissed such advice, calling the USDA's measures overly cautious and stating  
10 that the proposed precautionary statements could have an adverse effect on the future sales of  
11 Nemagon.  
12

13         30. At this time CHEMICAL DEFENDANTS decided not to recall, and BANANA  
14 FARM DEFENDANTS decided not to stop applying, any of the DBCP. CHEMICAL  
15 DEFENDANTS continued to distribute DBCP despite the toxicity of the soil fumigant.  
16 DEFENDANTS continued to sell, distribute, purchase, or apply toxic DBCP in conscious  
17 disregard for the health and safety of Plaintiffs who were routinely exposed to the pesticide.  
18

19         31. On or about August 12, 1977, the Occupational Safety and Health Administration  
20 issued a warning letter to CHEMICAL DEFENDANTS, calling their attention to the hazard of  
21 worker exposure to DBCP. On or about August 19, 1977, the Director of NIOSH wrote to  
22 CHEMICAL DEFENDANTS requesting information to fully evaluate the extent of the hazards  
23 posed by exposure to DBCP. Although CHEMICAL DEFENDANTS suspended production of  
24 DBCP in the late 1970's, they nevertheless continued to allow the marketing, distribution, and  
25 sale of the DBCP in question to Costa Rica, and did so in conscious disregard of the health and  
26  
27  
28

1 safety of Plaintiffs there. In addition, BANANA FARM DEFENDANTS continued to oversee  
2 the application of the DBCP in question on banana farms, including those specifically mentioned  
3 herein and others in Costa Rica.  
4

5 32. By the time that CHEMICAL DEFENDANTS had suspended production of  
6 DBCP, however, millions of gallons had been exported to Central America and, in turn,  
7 Plaintiffs had already been exposed to it. In addition, millions of gallons of DBCP manufactured  
8 and sold to BANANA FARM DEFENDANTS under the brand names of Nemagon and  
9 Fumazone by the same defective process were also toxic. Plaintiffs have suffered serious injuries  
10 as a result of their exposure to DBCP.  
11

12 33. Prior to the general ban in the United States in 1979, CHEMICAL  
13 DEFENDANTS knew that DBCP was toxic and could cause sperm loss and other injuries to  
14 Plaintiffs; and that DBCP could not be safely applied in any amount or fashion. Despite this  
15 knowledge, CHEMICAL DEFENDANTS continued to distribute millions of gallons of DBCP to  
16 BANANA FARM DEFENDANTS for application on plantation farms across Costa Rica.  
17

18 34. Plaintiffs are informed and believe, and on that basis, herein allege that  
19 CHEMICAL DEFENDANTS did not act with due care when responding to the general ban on  
20 DBCP by the EPA. Plaintiffs are informed and believe, and on the basis, herein allege that  
21 CHEMICAL DEFENDANTS failed to expeditiously remove the toxic DBCP distributed abroad  
22 from the stream of commerce, failed to expeditiously recall barrels containing toxic DBCP, and  
23 continued to distribute the toxic DBCP after receiving notice of the general ban. At all relevant  
24 times, CHEMICAL DEFENDANTS had actual or constructive knowledge of the foregoing  
25 general ban and the toxicity of DBCP and, therefore are directly liable for injuries to Plaintiffs  
26 based upon the following: (a) CHEMICAL DEFENDANTS financially supported the continued  
27  
28

1 distribution of DBCP throughout Central America, including those specifically mentioned herein  
2 and others in Costa Rica; (b) CHEMICAL DEFENDANTS had direct involvement with the  
3 testing of laboratory rats and mice that developed testicular atrophy as a result of their exposure  
4 to DBCP; (c) CHEMICAL DEFENDANTS had some of its key employee personnel serve as  
5 members of these testing and research groups; (d) CHEMICAL DEFENDANTS created the  
6 overall policy regarding the steps and procedures to be followed to validate continued  
7 distribution of DBCP despite such adverse findings; (e) CHEMICAL DEFENDANTS' personnel  
8 were involved in the fact-finding investigations into the problems stemming from workers with  
9 abnormally low sperm counts and their exposure to DBCP stemming from manufacture and  
10 formulation of the pesticide; (f) CHEMICAL DEFENDANTS implemented policies and  
11 procedures whereby they developed an indemnity plan with BANANA FARM DEFENDANTS  
12 in case of lawsuits connected with exposure to DBCP; (g) CHEMICAL DEFENDANTS planned  
13 to continue distributing DBCP after the general ban in the United States if profits exceeded  
14 potential lawsuit costs; and (h) CHEMICAL DEFENDANTS planned to sell millions of pounds  
15 of DBCP per year after the general ban in the United States for application on banana farms  
16 throughout Central America, including those specifically mentioned herein and others in Costa  
17 Rica.

21  
22 35. Plaintiffs are informed and believe, and on the basis, herein allege that BANANA  
23 FARM DEFENDANTS did not act with due care when responding to the general ban on DBCP  
24 by the EPA. At all relevant times, BANANA FARM DEFENDANTS had actual or constructive  
25 knowledge of the foregoing general ban and the toxicity of DBCP and, therefore, are directly  
26 liable for the injuries to Plaintiffs based upon the following: (a) BANANA FARM  
27 DEFENDANTS financially supported the continued distribution of DBCP to banana farms  
28

1 throughout Central America, including those specifically mentioned herein and others in Costa  
 2 Rica; (b) BANANA FARM DEFENDANTS were directly involved in the application process of  
 3 DBCP on banana farms throughout Central America, including those specifically mentioned  
 4 herein and others in Costa Rica; (c) BANANA FARM DEFENDANTS continued to purchase  
 5 DBCP from CHEMICAL DEFENDANTS after the general ban was instituted by the EPA,  
 6 despite knowledge of the adverse health effects that exposure could have on humans; (d)  
 7 BANANA FARM DEFENDANTS agreed to indemnify CHEMICAL DEFENDANTS in the  
 8 event of lawsuits connected with exposure of DBCP; and (e) BANANA FARM DEFENDANTS  
 9 had knowledge that exposure to DBCP could cause testicular atrophy and other serious health  
 10 problems in humans as a result of earlier tests conducted by CHEMICAL DEFENDANTS.

### 13 THE DISCOVERY RULE

14 36. Plaintiffs allege they had no knowledge of the cause of their injuries. Plaintiffs did  
 15 not suspect, nor did they have reason to suspect, that their injuries were caused by  
 16 DEFENDANTS' wrongdoing. Specifically, Plaintiffs did not have a suspicion of wrong doing  
 17 until diagnosed by doctors in 2003.

19 37. DEFENDANTS did not disclose that DBCP was unreasonably dangerous.  
 20 Plaintiffs were not provided with any information about the discovery that DBCP could cause  
 21 sterility. Plaintiffs were not provided any information regarding the EPA's ban of DBCP in the  
 22 United States because it was an unreasonably dangerous product. Without this information,  
 23 which DEFENDANTS had access to at all times herein, Plaintiffs did not have notice or  
 24 information of circumstances which would put a reasonable person on inquiry.

26 38. Plaintiffs are Costa Rican citizens and speak only their native language, Spanish.  
 27 Even if the literature concerning the harmful qualities of DBCP made its way to the remote  
 28

1 banana farms of Costa Rica, it would have been of no use. The individual Plaintiffs speak only  
 2 Spanish and many lack fundamental reading skills. Any information provided to them, in a  
 3 language other than Spanish, would not have put them on inquiry. Furthermore, the only  
 4 information contained on the barrels of DBCP were the words "Dow," the names of the  
 5 CHEMICAL DEFENDANTS, or the chemical names, either Nemagon or Fumazone. This  
 6 information does not provide notice or information of circumstances which would put a  
 7 reasonable person on inquiry.  
 8

9  
 10 39. Given the location of the Plaintiffs and their living conditions and access to  
 11 information, it was impossible for the Plaintiffs to have any suspicion of wrongdoing. Plaintiffs  
 12 worked long days in a remote part of the world, away from mass media. They had no access to  
 13 the information revealing the hazards of DBCP. As such Plaintiffs did not have notice or  
 14 information of circumstances which would put a reasonable person on inquiry.  
 15

16 40. Furthermore, sterility is an injury that is not easily discovered. There are no  
 17 symptoms that would prompt a reasonable prudent person to suspect wrongdoing. There was no  
 18 way for Plaintiffs to know of any injury until properly diagnosed by a doctor, which occurred in  
 19 2003. Until that time, Plaintiffs could not have had notice or information of circumstances that  
 20 would put a reasonable person on inquiry.  
 21

## 22 **FIRST CAUSE OF ACTION**

### 23 **PRODUCTS LIABILITY – NEGLIGENCE** 24 **(As to All Defendants)**

25 41. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
 26 through 40 above as if set forth fully herein.

27 42. DEFENDANTS in manufacturing, distributing, or applying DBCP had a duty to  
 28 Plaintiffs to do so in a reasonable manner and to ensure that the product was without defect.



1       43.     DEFENDANTS breached this duty when they placed the defective product into  
2 the stream of commerce either with knowledge or negligently unaware of its defective and toxic  
3 nature and propensity to cause harm to individuals such as Plaintiffs.  
4

5       44.     As a direct and proximate result of DEFENDANTS' negligence, the toxically  
6 defective DBCP applied on banana farms specifically mentioned herein and others in Costa Rica,  
7 caused harm and injury to Plaintiffs.  
8

9       45.     Wherefore, Plaintiffs pray for damages as set forth below.  
10

11                   **SECOND CAUSE OF ACTION**

12                   **STRICT PRODUCTS LIABILITY**  
13                   **(As to All Defendants)**

14       46.     Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
15 through 45 above as if set forth fully herein.  
16

17       47.     DEFENDANTS, at all times relevant to this action, engaged in the business of  
18 designing, manufacturing, marketing, distributing, selling, or purchasing DBCP for application  
19 on banana plantation farms specifically mentioned herein, and others in Costa Rica.  
20

21       48.     DEFENDANTS knew and intended that the DBCP designed, manufactured,  
22 marketed, distributed, sold, or purchased by DEFENDANTS would be used by Plaintiffs without  
23 inspection for defects in the product. In response to the EPA's ban on general use in the United  
24 States in 1979, DEFENDANTS continued to expressly distribute and purchase DBCP for use on  
25 banana farm plantations throughout Central America.  
26

27       49.     The DBCP in question was, at the time of purchase, defective and unsafe for its  
28 intended purpose in that it was not safe but was instead toxic with various chemicals harmful to  
the human body that resulted in the potential for sterility and other serious injuries.

1        50. Millions of pounds of DBCP were applied on banana plantation farms throughout  
2 Costa Rica by Plaintiffs, who were not aware of the hazards of the pesticide. Plaintiffs suffered  
3 severe mental and physical injuries as a result of exposure to DBCP. The DBCP was the actual  
4 and proximate cause of the mental and physical injuries suffered by Plaintiffs.  
5

6        51. Plaintiffs are informed and believe, and thereon, allege that DEFENDANTS:

- 7            a. knew or should have known that the DBCP designed, manufactured,  
8 marketed, distributed, sold, or purchased by DEFENDANTS for  
9 subsequent use on banana farms throughout Costa Rica was toxically  
10 defective and unreasonably dangerous in the manner alleged above;  
11  
12            b. knew or should have known that because of the toxic defect, the exported  
13 DBCP could not safely be used for the purposes for which it was intended;  
14  
15            c. knew or should have known that the exported DBCP was defective and  
16 dangerous, and in conscious disregard of the safety of the Plaintiffs,  
17 placed it in the stream of commerce within Central American markets;  
18  
19            d. knew or should have knows that when the exported DBCP was placed in  
20 the stream of commerce, it would be sold to BANANA FARM  
21 DEFENDANTS and used by the Plaintiffs for application.  
22  
23            e. represented that the exported DBCP was safe when in fact it was toxic and  
24 was reported to have substantial adverse health effects in humans.

25        52. DEFENDANTS, in designing, manufacturing, marketing, distributing, selling, or  
26 purchasing DBCP, had a duty to Plaintiffs to do so in a reasonable manner and to ensure that the  
27 product was without defect. DEFENDANTS breached these duties by placing a defective  
28

1 product into the stream of commerce when they knew or reasonably should have known of the  
2 product's defective nature and of its propensity to cause harm to individuals such as Plaintiffs.

3  
4 53. By placing toxic DBCP in the stream of commerce, CHEMICAL DEFENDANTS  
5 impliedly represented that they were safe for the purpose for which they were intended. As a  
6 direct and proximate result of DEFENDANTS' conduct in the designing, manufacturing,  
7 marketing, distributing, selling, or purchasing the toxically defective and dangerous pesticide  
8 known as DBCP for use on those banana plantation farms specifically mentioned herein and  
9 others in Costa Rica, Plaintiffs have been injured.

10  
11 54. Wherefore, named Plaintiffs pray for damages as set forth below.

12 **THIRD CAUSE OF ACTION**

13 **PRODUCTS LIABILITY-DEFECT IN DESIGN,  
14 MANUFACTURE, AND CHEMICAL COMPOSITION  
15 (As to Chemical Defendants)**

16 55. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
17 through 54 above as if set forth fully herein.

18 56. The millions of pounds of exported DBCP that are the subject of the instant action  
19 were not reasonably fit, suitable, or safe for their intended use by reason of a toxic defect in their  
20 design, manufacture, or chemical composition, which caused them to be unreasonably dangerous  
21 to humans.

22  
23 57. The defect in design, manufacture, or chemical composition existed at the time  
24 CHEMICAL DEFENDANTS placed the DBCP into the stream of commerce.

25 58. The DBCP was used in its intended and reasonably foreseeable way when it  
26 caused injury to Plaintiffs.  
27  
28

1        59.    As a direct and proximate result thereof, Plaintiffs have been injured and  
2 damaged.

3        60.    Wherefore, named Plaintiffs pray for damages as set forth below.  
4

5                    **FOURTH CAUSE OF ACTION**

6                    **PRODUCTS LIABILITY-BREACK OF WARRANTY**  
7                    **(As to All Defendants)**

8        61.    Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
9 through 60 above as if set forth fully herein.

10       62.    CHEMICAL DEFENDANTS as the designer, manufacturer, marketer,  
11 distributor, or seller expressly warranted that the DBCP was fit for its intended purpose in that  
12 said product would conform to the specifications thereof.  
13

14       63.    DEFENDANTS also breached the warranty implied in the contract for the sale  
15 and subsequent use of goods in that the goods could not pass without objection in the trade under  
16 the contract description, the goods were not of fair average quality within the description, and the  
17 goods were unfit for their intended and ordinary purpose in that they were highly toxic and  
18 unsafe and therefore unreasonably dangerous. As a result, Plaintiffs did not receive the goods as  
19 impliedly warranted by DEFENDANTS to be merchantable.  
20

21       64.    DEFENDANTS impliedly warranted that the DBCP was fit for the purpose for  
22 which it was designed in that it was safe, and a suitable instrumentality for use on banana  
23 plantation farms specifically mentioned herein and others in Costa Rica. In reliance upon  
24 DEFENDANTS' skill and judgment and the implied warranties of fitness for the purpose,  
25 Plaintiffs applied DBCP on those banana plantation farms specifically mentioned herein and  
26 others in Costa Rica.  
27  
28

1           65.     The DBCP was sold to BANANA FARM DEFENDANTS with the knowledge  
2 and intent that the DBCP be used for the benefit of banana production on plantation farms  
3 throughout Costa Rica. Plaintiffs' employers, BANANA FARM DEFENDANTS, utilized the  
4 toxic DBCP by ordering Plaintiffs to apply it around banana trees and compensating Plaintiffs at  
5 an unreasonably low rate of pay.  
6

7           66.     The DBCP was not altered by Plaintiffs, or other third parties. The DBCP was  
8 defective when it left the exclusive control of CHEMICAL DEFENDANTS, and BANANA  
9 FARM DEFENDANTS knew the DBCP would be used without additional tests for toxicity. The  
10 DBCP was contaminated and unfit for its intended purpose and Plaintiffs did not receive the  
11 goods as warranted.  
12

13           67.     As a direct and proximate cause of DEFENDANTS' breach of express warranty,  
14 Plaintiffs have been injured and damaged.  
15

16           68.     Wherefore, named Plaintiffs pray for damages as set forth below.  
17

### 18                               FIFTH CAUSE OF ACTION

#### 19                               FRAUDULENT MANAGEMENT 20                               (As to Banana Farm Defendants)

21           69.     Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
22 through 68 above as if set forth fully herein.  
23

24           70.     As described above, DEFENDANTS designed, manufactured, marketed,  
25 distributed, sold, or purchased containers of toxic DBCP for application on those plantation  
26 farms specifically mentioned herein and others in Costa Rica. Once BANANA FARM  
27 DEFENDANTS learned that the DBCP was toxic, they had a duty to Plaintiffs to discontinue use  
28 of the product, as it was unreasonable dangerous. BANANA FARM DEFENDANTS breached

1 this duty when they failed to institute any product recall upon learning that the exported DBCP  
2 was toxic.

3 71. As a direct and proximate result of BANANA FARM DEFENDANTS' fraudulent  
4 management regarding the application of DBCP, Plaintiffs have been injured.  
5

6 72. Wherefore, named Plaintiffs pray for damages as set forth below.

7 **SIXTH CAUSE OF ACTION**

8 **INTENTIONAL MISREPRESENTATION**  
9 **(As to All Defendants)**

10 73. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
11 through 72 above as if set forth fully herein.

12 74. At all times herein referred to, CHEMICAL DEFENDANTS were engaged in the  
13 business of designing, manufacturing, marketing, distributing, or selling DBCP, which is the  
14 subject of the instant litigation, for use on banana plantation farms specifically mentioned herein  
15 and others in Costa Rica.  
16

17 75. CHEMICAL DEFENDANTS, acting through their officers, agents, servants,  
18 representatives, or employees, distributed the toxic DBCP to BANANA FARM DEFENDANTS  
19 and various other distribution channels.  
20

21 76. BANANA FARM DEFENDANTS willfully, falsely, and knowingly  
22 misrepresented material facts relating to the character and quality of DBCP. These  
23 misrepresentations are contained in carious media advertising and documentation disseminated  
24 or caused to be disseminated by CHEMICAL DEFENDANTS, and such misrepresentations were  
25 reiterated and disseminated by officers, agents, representatives, servants, or employees of  
26 CHEMICAL DEFENDANTS, acting within the line and scope of their authority, so employed  
27 by CHEMICAL DEFENDANTS to merchandise and market the product. Specifically,  
28



1 DEFENDANTS knew that there were significant health risks associated with exposure to DBCP,  
2 yet CHEMICAL DEFENDANTS continued to distribute DBCP, and BANANA FARM  
3 DEFENDANTS continued to purchase DBCP, for application on banana plantation farms  
4 specifically mentioned herein and others in Costa Rica.  
5

6 77. All DEFENDANTS continue to intentionally violate Plaintiffs' rights by inducing  
7 them to sign fraudulent releases. Defendants have not been and are engaging in a campaign to  
8 purchase releases of Plaintiffs' DBCP claims under conditions in which the purported releasers  
9 are encouraged to act based on inaccurate information about their reproductive impairments and  
10 without the advise of counsel. DEFENDANTS have made material false misrepresentations to  
11 Plaintiffs, knowing that the misrepresentations were false or made recklessly without any  
12 knowledge and as a positive assertion.  
13

14 78. Defendants' settlement campaign and false misrepresentations consists of some of  
15 the following acts outside the presence and without the knowledge of Plaintiffs' counsel:  
16 Defendant or their agents (1) seek out workers (Plaintiffs in this case) who were exposed to  
17 DBCP; (2) tell workers that their DBCP claims may be settled quickly but only if the claimants  
18 are not represented by counsel; (3) tell workers who are already represented that such  
19 representation is "not important" or "does not matter"; (4) provide workers with an "attorney"  
20 who received a percentage of the less than adequate recovery to ostensibly "assist" in the  
21 execution of the release; (5) instruct workers to go to a clinic for a semen test and give them  
22 money to cover associated food and travel expenses; (6) tell DBCP-affected workers that their  
23 claims are without merit but, nevertheless, may be settled quickly (as a form of "assistance") so  
24 long as plaintiffs' lawyers are not involved; and (7) eventually offer workers between 400,000  
25 and 900,000 colones (approximately \$2,900 to \$6,500) to release all their related claims.  
26  
27  
28

1 DEFENDANTS and their agents also tell workers that plaintiffs' lawyers will "charge [DBCP  
2 exposed workers] 60 to 70 percent of the recoveries" while the defendants will "charge them  
3 nothing."  
4

5 79. A significant number of Plaintiffs have relied to their detriment on and have been  
6 harmed by DEFENDANTS by signing releases. As a result of Defendants' fraudulent acts, the  
7 misinformed workers (Plaintiffs in this case), do not understand: (1) whom they are purportedly  
8 releasing; (2) whom they are potentially bidding in their releases; and (3) that they are  
9 compromising their claims for amounts substantially less than that for which virtually identical  
10 claims in similar litigation have been settled. Plaintiffs have been further harmed by  
11 DEFENDANTS' fraudulent acts because even if the releases are thereafter invalidated as a result  
12 of being fraudulently and unfairly obtained, they will present a serious obstacle to a fair and  
13 expeditious resolution of Plaintiffs' DBCP claims by forcing Plaintiffs to expend court time and  
14 resourced to prove the fraudulent nature of such releases.  
15

16  
17 80. DEFENDANTS' representations were made with the intent that the general  
18 public, including Plaintiffs, rely upon them. DEFENDANTS' representations were made with  
19 knowledge of the falsity of such statements, or in reckless disregard of the truth thereof.  
20

21 81. In actual and reasonable reliance upon DEFENDANTS' misrepresentations,  
22 Plaintiffs used the DBCP for their intended and reasonable foreseeable purposes: i.e., controlling  
23 plant plagues and prevention of diseases and insects associated with banana production.  
24 Plaintiffs were unaware of the existence of facts that DEFENDANTS suppressed and failed to  
25 disclose. If they had been aware of the suppressed facts, Plaintiffs would not have used DBCP.  
26

27 82. Plaintiffs are informed and believe, and thereon allege, that DEFENDANTS  
28 misrepresented material facts with the intent to defraud Plaintiffs. Plaintiffs were unaware of the

1 intent of DEFENDANTS and relied upon the representations of DEFENDANTS in agreeing to  
2 apply the DBCP. Plaintiffs' reliance on the representations of DEFENDANTS was reasonable.

3 83. In actual and reasonable reliance upon MANUFACTURER DEFENDANTS'  
4 misrepresentations, Plaintiffs applied the DBCP in the way in which it was intended, the direct  
5 and proximate result of which was injury and harm to the Plaintiffs.  
6

7 84. Wherefore, named Plaintiffs pray for damages as set forth below.

8 **SEVENTH CAUSE OF ACTION**

9 **FRAUD BY CONCEALMENT**  
10 **(As to All Defendants)**

11 85. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
12 through 84 above as if set forth fully herein.

13 86. Plaintiffs are informed and believe, and thereon allege, that DEFENDANTS knew  
14 that there was a high probability that DBCP manufactured from January 1, 1970 thereafter was  
15 not safe for application, but was in fact highly toxic, and concealed this fact.  
16

17 87. DEFENDANTS had a duty to disclose this information to Plaintiffs.  
18 DEFENDANTS failed to timely disclose this information to Plaintiffs. Further, DEFENDANTS  
19 actively suppressed and concealed the fact that there was a high probability that DBCP  
20 manufactured from January 1, 1970 thereafter was not safe for application, but was in fact highly  
21 toxic.  
22

23 88. DEFENDANTS concealed such information for the purpose of inducing the use  
24 of the DBCP designed, manufactured, distributed, and sold by CHEMICAL DEFENDANTS.  
25

26 89. Plaintiffs were unaware of the existence of facts, which DEFENDANTS failed to  
27 disclose and actively suppressed and concealed. If they had been aware of the facts not disclosed  
28 by DEFENDANTS, they would not have agreed to the use of the toxic DBCP. Plaintiffs are

1 informed and believe and thereon allege that DEFENDANTS concealed such material facts with  
 2 the intent to defraud Plaintiffs. Under the circumstances, especially since DEFENDANTS  
 3 omitted and concealed material facts, Plaintiffs' reliance on the representations of  
 4 DEFENDANTS was reasonable.  
 5

6 90. As a result of DEFENDANTS' material omissions, failure to disclose, and active  
 7 concealment, Plaintiffs used BANANA FARM DEFENDANTS' toxic DBCP purchased from  
 8 CHEMICAL DEFENDANTS, and used it in the way in which it was intended, the direct and  
 9 proximate result of which was injury and harm to the Plaintiffs.  
 10

11 91. Wherefore, named Plaintiffs pray for damages as set forth below.

## 12 EIGHTH CAUSE OF ACTION

### 13 GENERAL NEGLIGENCE 14 (As to All Defendants)

#### 15 A. Negligent Recall

16 92. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
 17 through 91 above as if set forth fully herein.  
 18

19 93. As described above, DEFENDANTS designed, manufactured, marketed,  
 20 distributed, or sold DBCP. Once DEFENDANTS learned that DBCP was toxic and unreasonable  
 21 dangerous and defective, they had a duty to Plaintiffs to institute an effective product recall.  
 22

23 94. DEFENDANTS breached this duty not only when they failed to institute any  
 24 product recall upon learning the DBCP was toxic and unreasonably dangerous and defective, but  
 25 also when they failed to institute an effective product recall after receiving a letter from the  
 26 Occupational Safety and Health Administration on August 12, 1972, calling their attention to the  
 27 hazard of worker exposure to DBCP. As a direct and proximate result of DEFENDANTS'  
 28 failure to effectively recall the DBCP, Plaintiffs have been injured.

1           95.     Wherefore, Plaintiffs pray for damages as set forth below.

2           **B.     Negligent Misrepresentation**

3           96.     Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
4 through 95 above as if set forth fully herein.

5  
6           97.     DEFENDANTS negligently and recklessly misrepresented various material facts  
7 regarding the quality and character of their product, under circumstances where DEFENDANTS  
8 either knew or, in the exercise of reasonable care, should have known that the representations  
9 were not true or were not known to be true. These misrepresentations were contained in carious  
10 packaging, labeling and correspondence from DEFENDANTS, and such misrepresentations  
11 were further reiterated and disseminated by the officers, agents, representatives, servants, or  
12 employees of DEFENDANTS acting within the scope of their authority.

13  
14           98.     In reliance upon these misrepresentations, Plaintiffs used DBCP distributed  
15 through BANANA FARM DEFENDANTS on plantation farms specifically mentioned herein  
16 and others in Costa Rica. Had Plaintiffs knows the true facts, including, but not limited to, the  
17 fact that the DBCP was toxic and therefore unsafe and unreasonably dangerous, they would not  
18 have used the DBCP designed, manufactured, marketed, distributed, and sold by CHEMICAL  
19 DEFENDANTS.  
20

21           99.     As a direct and proximate consequence of DEFENDANTS' negligent  
22 misrepresentations, Plaintiffs have been injured.

23           100.    Wherefore, named Plaintiffs pray for damages as set forth below.

24           **C.     Negligent Distribution**

25           101.    Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
26 through 100 above as if set forth herein.  
27  
28

1           102. DEFENDANTS negligently and recklessly distributed DBCP after DEFENDANT  
2 knew or, in the exercise of reasonable care, should have known that said product was  
3 unreasonably dangerous and would cause sterility. As described above, DEFENDANTS  
4 designed, manufactured, marketed, distributed, or sold DBCP. Once DEFENDANTS learned  
5 that DBCP was toxic ad unreasonably dangerous and defective, they had a duty to Plaintiffs to  
6 cease distribution.  
7

8           103. DEFENDANTS breached this duty when they continued distributing DBCP after  
9 learning from Occupational Safety and Health Administration on August 2, 1977 that DBCP was  
10 highly toxic and unreasonably dangerous.  
11

12           104. As a direct and proximate result of DEFENDANTS' failure to cease distribution  
13 of the DBCP, Plaintiffs have been injured.  
14

15           105. Wherefore, Plaintiffs pray for damages as set forth below.  
16

17                           **NINTH CAUSE OF ACTION**

18                                   **CONSPIRACY**  
19                                   **(As to all Defendants)**

20           106. Plaintiffs incorporate by reference each allegation contained in paragraphs 1  
21 through 105 above as if set forth fully herein.

22           107. DEFENDANTS knowingly and willfully conspired and agreed among  
23 themselves, in various indemnity agreements, to commit the aforementioned tortuous acts.  
24 DEFENDANTS did the acts and things herein alleged pursuant to, and in furtherance of, the  
25 conspiracy and above-alleged indemnity agreements. DEFENDANTS furthered the conspiracy  
26 by cooperation with and encouragement to each other in that all DEFENDANTS contributed to  
27 the manufacturing, marketing, distribution, and application of DBCP after the DEFENDANTS  
28



1 knew or, in the exercise of reasonable care, should have known that DBCP was an unreasonably  
2 dangerous product or would cause sterility.

3 108. As a direct and proximate result of DEFENDANTS' conspiracy, Plaintiffs have  
4 been injured.  
5

6 109. Wherefore, Plaintiffs pray for damages as set forth below.  
7

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs pray for judgment against DEFENDANTS, as follows:  
10

11 110. For special damages according to proof;

12 111. For general damages according to proof;

13 112. For punitive and exemplary damages in causes of action 1, 2, 3, 4, 5, 6, 7, and 9  
14 the basis for which will be proven at trial. Said exemplary or punitive damages are due and  
15 awardable pursuant to the actions of Defendants described above, including fraud and deceit,  
16 wanton and reckless acts of commission and omission, and outrageous and malicious conduct, in  
17 an amount in favor of each Plaintiff, as a multiple of each Plaintiffs' compensatory damages, all  
18 totaled to an amount sufficient to punish said Defendants so as to deter it and others like it from  
19 similar wrongdoing;  
20

21 113. Prejudgment interest; and post judgment interest;  
22

23 114. For Plaintiffs' attorney fees and costs of suit incurred herein;  
24

25 ///

26 ///

27 ///

28 ///

Respectfully Submitted,

**ENGSTROM, LIPSCOMB & LACK  
PROVOST \* UMPHREY LAW FIRM**

By: \_\_\_\_\_

WALTER J. LACK  
ELIZABETH CROOKE  
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MARK SPARKS  
Attorneys for Plaintiffs

## COSTA RICA APPENDIX B

NO.	Last Name	First Name	Cédula
1	ACOSTA CORTES	JORGE	51481174
2	ACUÑA AGÜERO	ANTONIO	1497014
3	ACUÑA MURILLO	GERARDO	1491893
4	AGÜERO ARTAVIA	JAVIER RAMÓN	5158894
5	AGÜERO MORA	TEODORO	6105507
6	AGUILAR CÉSPEDES	VÍCTOR HUGO	7085589
7	AGUILAR MONTERO	JOSÉ JOAQUÍN	6111793
8	AGUILAR MORA	OSCAR	31901299
9	AGUILAR SOLANO	ALBINO	3232263
10	AGUIRRE AGUIRRE	JOSÉ SIMÓN	6054010
11	AGUIRRE AGUIRRE	JOSÉ FRANCISCO	5144547
12	AGUIRRE VILLAGRA	ALFONSO	5090355
13	AGUIRRE ZUÑIGA	SANTOS VIANNEY	5175062
14	ALVARADO RÍOS	CLEMENTE	5085081
15	ALVARADO ZAMORA	ALCIDES	5129364
16	ALVAREZ AGUIRRE	ÁNGEL JULIÁN	7064453
17	ALVAREZ ALVAREZ	ANTONIO	7047271
18	ALVAREZ ALVAREZ	LUIS ANTONIO	5159419
19	ALVAREZ BUSTOS	JESÚS	5195826
20	ALVAREZ DÍAZ	SIGIFREDO	5118325
21	ALVAREZ MORALES	ROQUE	7037365
22	ALVAREZ ROSALES	HERNÁN	5118191
23	ALVAREZ RUIZ	GIOVANNI	6173690
24	ALVAREZ VILLATORO	VÍCTOR MANUEL	2201009183794

25	ANGULO ANGULO	JOSÉ ELVIS	5189363
26	ARAGON MIRANDA	FERNANDO	5081176
27	ARAGÓN MIRANDA	SERGIO	5113231
28	ARAGÓN RUGAMA	CRISTÓBAL ALBERTO	5073859
29	ARAYA ALVAREZ	MARVIN	7060129
30	ARAYA BOLAÑOS	JOSE ANGEL	9033674
31	ARAYA HERNÁNDEZ	CLAUDIO	7033467
32	ARAYA ORTEGA	JUAN	3211036
33	ARAYA ROJAS	BENEDICTO	2228468
34	ARCE BEJARANO	JOSÉ DONALDO	8064040
35	ARCE QUESADA	VICTOR JULIO	51391334
36	ARCE RETANA	ELIÉCER	5144332
37	ARGUEDAS MUÑOZ	VICTOR	5086437
38	ARIAS ÁVILA	VIDAL	5132684
39	ARIAS MEZA	GILBERTO	7071306
40	ARIAS PANIAGUA	HERMINIO	3123072
41	ARIAS SOLANO	BIENVENIDO	3230128
42	ARIAS VILLALOBOS	EDUARDO	7063959
43	ÁVILA CAMBRONERO	RAFAEL ANTONIO	3140807
44	AVILÉS JUAREZ	HUGO	5218394
45	BALDELOMAR BALDELOMAR	RICARDO ALBERTO	2707684531730
46	BALTODANO BALTODANO	EDUARDO FAUSTO	5115699
47	BALTODANO DÍAZ	VIRGILIO	5136855
48	BALTODANO DÍAZ	MÉRIDO	5112538
49	BALTODANO ZÚÑIGA	JOSÉ MARVIN	5180987
50	BARAHONA FONSECA	ALFONSO	7047566

1	51	BARAHONA FONSECA	OLIVIER GERARDO	9049589
2	52	BARBOZA FERNÁNDEZ	HUGO	1301402
3	53	BARBOZA MENDOZA	AMALIO	7064696
4	54	BARQUERO BARQUERO	JOSÉ FRANCISCO	7042317
5	55	BARQUERO CAMPOS	JESUS MARIA	51391256
6	56	BARQUERO PICADO	CARLOS LUIS	7039234
7	57	BARRIOS BARRIOS	CARLOS LUIS	61051359
8	58	BENAVIDES ESQUIVEL	LUIS ÁLVARO	2266262
9	59	BERROCAL CHINCHILLA	JOVEL	6088814
10	60	BERROCAL JIMÉNEZ	GABRIEL	6074229
11	61	BOJORGE APU	FRANCISCO	6057480
12	62	BOLAÑOS MONTOYA	AGUSTÍN	7067211
13	63	BOLAÑOS MONTOYA	GERVASIO	7052707
14	64	BOLÍVAR SILES	RIGOBERTO	6132117
15	65	BONILLA MADRIGAL	RAFAEL	3124899
16	66	BONILLA ZÚÑIGA	SILVERIO	5158330
17	67	BRAVO HERNÁNDEZ	HERIBERTO	3206838
18	68	BRENES CISNEROS	JOSÉ	7058579
19	69	BRENES CRUZ	JESUS FRANCISCO	61051487
20	70	BRENES GUEVARA	ALEJANDRO	9033565
21	71	BRENES LEÓN	EDWIN RUBÉN	70481173
22	72	BRENES MARTÍNEZ	CÉSAR AURELIO	7037605
23	73	BRENES MORA	EDGAR	7055512
24	74	BRICEÑO MACOTELO	REMBERTO	5155831
25	75	BRIONES GARCÍA	BENEDICTO	51401290
26	76	BRIONES RANGEL	JOSÉ LEÓN	5135027

1	77	BUZANO VEGA	JOSÉ GREGORIO	51471461
2	78	CALDERÓN BARBOZA	JOSÉ LUIS	3262328
3	79	CALDERÓN SOLANO	OLDEMAR	7081614
4	80	CALVO VARGAS	MELVIN	7046267
5	81	CAMBRONERO GUERRERO	RAFAEL ÁNGEL	7044353
6	82	CAMPOS CAMPOS	JOSÉ ALBERTO	9042496
7	83	CAMPOS ZUMBADO	FRANCISCO	22781275
8	84	CARBALLO BARRIENTOS	RODOLFO	6065606
9	85	CARBALLO VARGAS	MARINO	6116774
10	86	CÁRDENAS GARCÍA	JOSÉ LIDIER	5133803
11	87	CARRILLO CARRILLO	JUAN PABLO	51451297
12	88	CARRILLO MATARRITA	FÉLIX	5112087
13	89	CARRILLO MATARRITA	CAMILO	5111438
14	90	CARRILLO OBREGÓN	FRANCISCO	5140864



CM-015

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>WALTER J. LACK, ESQ. (SBN 57550)</b> <b>ENGSTROM, LIPSCOMB &amp; LACK</b> <b>10100 SANTA MONICA BL, 12th FL, L.A., CA 90067</b>  TELEPHONE NO.: 310-552-3800 FAX NO. (Optional): 310-552-9434 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiffs, ACOSTA CORTES, et al.		FOR COURT USE ONLY  <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b>  <b>DEC 8, 2008</b>  <b>JOHNA CLARKE, CLERK</b> <b>BY MARY GARCIA, DEPUTY</b>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: SUPERIOR COURT - CENTRAL MAILING ADDRESS: 111 NORTH HILL STREET CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL		CASE NUMBER: <b>BC403364</b>  JUDICIAL OFFICER:	
PLAINTIFF/PETITIONER: ACOSTA CORTES, et al.  DEFENDANT/RESPONDENT: DOLE FOOD CO., INC., et al.		DEPT.:	
NOTICE OF RELATED CASE			

Identify, in chronological order according to date of filing, all cases related to the case referenced above.

1. a. Title: ANGEL ABARCA ABARCA, et al. v. DOLE FOOD CO., INC., et al.
- b. Case number: BC322412 (LEAD to BC331844,45&46)
- c. Court: ☐ same as above  
☒ other state or federal court (name and address): LASC-CENTRAL CIVIL WEST  
 600 S. Commonwealth Ave., L.A., CA 90005
- d. Department:
- e. Case type: ☐ limited civil ☒ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date: 10/01/04
- g. Has this case been designated or determined as "complex?" ☒ Yes ☐ No
- h. Relationship of this case to the case referenced above (check all that apply):  
☒ Involves the same parties and is based on the same or similar claims.  
☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.  
☐ Involves claims against, title to, possession of, or damages to the same property.  
☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.  
☐ Additional explanation is attached in attachment 1h
- i. Status of case:  
☒ pending  
☐ dismissed ☐ with ☐ without prejudice  
☐ disposed of by judgment

2. a. Title:
- b. Case number:
- c. Court: ☐ same as above  
☐ other state or federal court (name and address):
- d. Department:

PLAINTIFF/PETITIONER: ACOSTA CORTES, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: DOLE FOOD CO., INC., et al.	

## 2. (continued)

- e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):
- f. Filing date:
- g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No
- h. Relationship of this case to the case referenced above (check all that apply):
- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 2h
- i. Status of case:
- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

## 3. a. Title:

b. Case number:

- c. Court: ☐ same as above
- ☐ other state or federal court (name and address):

d. Department:

- e. Case type: ☐ limited civil ☐ unlimited civil ☐ probate ☐ family law ☐ other (specify):

f. Filing date:

- g. Has this case been designated or determined as "complex?" ☐ Yes ☐ No

h. Relationship of this case to the case referenced above (check all that apply):

- ☐ involves the same parties and is based on the same or similar claims.
- ☐ arises from the same or substantially identical transactions, incidents, or events requiring the determination of the same or substantially identical questions of law or fact.
- ☐ involves claims against, title to, possession of, or damages to the same property.
- ☐ is likely for other reasons to require substantial duplication of judicial resources if heard by different judges.
- ☐ Additional explanation is attached in attachment 3h

i. Status of case:

- ☐ pending
- ☐ dismissed ☐ with ☐ without prejudice
- ☐ disposed of by judgment

4. ☐ Additional related cases are described in Attachment 4. Number of pages attached: \_\_\_\_\_

Date: December 8, 2008

WALTER J. LACK

(TYPE OR PRINT NAME OF PARTY OR ATTORNEY)



(SIGNATURE OF PARTY OR ATTORNEY)

PLAINTIFF/PETITIONER: ACOSTA CORTES, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: DOLE FOOD CO., INC., et al.	

**PROOF OF SERVICE BY FIRST-CLASS MAIL****NOTICE OF RELATED CASE**

**(NOTE: You cannot serve the Notice of Related Case if you are a party in the action. The person who served the notice must complete this proof of service. The notice must be served on all known parties in each related action or proceeding.)**

1. I am at least 18 years old and **not a party to this action**. I am a resident of or employed in the county where the mailing took place, and my residence or business address is (*specify*):
  
  2. I served a copy of the *Notice of Related Case* by enclosing it in a sealed envelope with first-class postage fully prepaid and (*check one*):
    - a. ☐ deposited the sealed envelope with the United States Postal Service.
    - b. ☐ placed the sealed envelope for collection and processing for mailing, following this business's usual practices, with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service.
  3. The *Notice of Related Case* was mailed:
    - a. on (*date*):
    - b. from (*city and state*):
  4. The envelope was addressed and mailed as follows:
 

<ol style="list-style-type: none"> <li>a. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li>   <li>b. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li> </ol>	<ol style="list-style-type: none"> <li>c. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li>   <li>d. Name of person served:</li>   <li>Street address:</li> <li>City:</li> <li>State and zip code:</li> </ol>
--	--
- ☐ Names and addresses of additional persons served are attached. (*You may use form POS-030(P).*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

\_\_\_\_\_  
 (TYPE OR PRINT NAME OF DECLARANT)



\_\_\_\_\_  
 (SIGNATURE OF DECLARANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>ENGSTROM, LIPSCOMB &amp; LACK</b> 10100 SANTA MONICA BLVD. 16th Floor LOS ANGELES, CA 90067 TELEPHONE NO.: 310 552-3800 FAX NO. (Optional): 310 552-9434 EMAIL ADDRESS (Optional): ATTORNEY FOR (Name): CORTES		FOR COURT USE ONLY <b>FILED</b> LOS ANGELES SUPERIOR COURT DEC 11 2008 JOHN A. CLARKE, CLERK BY RAUL SANCHEZ, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: Room 109 CITY AND ZIP CODE: Los Angeles 90012 BRANCH NAME: Central District, Stanley Mosk Courthouse		CASE NUMBER: <b>BC403364</b>
PLAINTIFF/PETITIONER: CORTES DEFENDANT/RESPONDENT: DOLE FOOD COMPANY, INC.		
<b>PROOF OF SERVICE OF SUMMONS</b>		Ref. No. or File No.: <b>38000/2733/ACOSTA CORTES</b>

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the (specify documents):  
**Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Notice of Related Case; Notice of Case Assignment; Adr Information Packet**
- Party served (specify name of party as shown on documents served):  
**DOLE FRESH FRUIT COMPANY**
  - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**MARGARET WILSON, PROCESS SPECIALIST/ AGENT FOR SERVICE OF PROCESS, A white female approx. 55-65 years of age 5'4"-5'6" in height weighing 120-140 lbs with gray hair**
- Address where the party was served:  
**CT CORPORATION SYSTEM, 818 W 7TH Street, LOS ANGELES, CA 90017**
- I served the party (check proper box)
  - ☒ **by personal service.** I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **12/10/2008** (2) at (time): **2:00 PM**
  - ☐ **by substituted service.** On (date): (2) at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - ☐ **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - ☐ **(home)** a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - ☐ **(physical address unknown)** a person of at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

 Form Adopted for Mandatory Use  
 Judicial Council of California  
 POS-010 (Rev. January 1, 2007)
**PROOF OF SERVICE OF SUMMONS**

Code of Civil Procedure, § 417.10

Order No. 5640145 LAX FIL



PLAINTIFF/PETITIONER: <b>CORTES</b>	CASE NUMBER: <b>BC403364</b>
DEFENDANT/RESPONDENT: <b>DOLE FOOD COMPANY, INC.</b>	

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,  
 (1) on (date): (2) from (city):  
 (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (Attach completed *Notice and Acknowledgment of Receipt*.) (Code Civ. Proc., § 415.30)  
 (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. ☐ by other means (specify means of service and authorizing code section):
- ☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.  
 b. ☐ as the person sued under the fictitious name of (specify):  
 c. ☐ as occupant  
 d. ☒ On behalf of (specify): **DOLE FRESH FRUIT COMPANY**  
 under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other  |

7. Person who served papers

- a. Name: **Mario Lopez**  
 b. Address: **261 S. Figueroa Street, SUITE 280, LOS ANGELES, CA 90012**  
 c. Telephone number: **213-621-9999**  
 d. The fee for service was: **\$59.50**  
 e. I am:  
 (1) ☐ not a registered California process server.  
 (2) ☐ exempt from registration under Business and Professions Code section 22350(b).  
 (3) ☒ registered California process server:  
 (i) ☐ owner ☐ employee ☒ independent contractor  
 (ii) ☒ Registration No.: **5143**  
 (iii) ☒ County: **Los Angeles**

BY FAX

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
 or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **12/12/2008**

**Mario Lopez**  
 (NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

  
 (SIGNATURE)



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, Street number, and address): <b>ENGSTROM, LIPSCOMB &amp; LACK</b> <b>10400 SANTA MONICA BLVD. 16th Floor</b> <b>LOS ANGELES, CA 90067</b> TELEPHONE NO.: <b>310 552-3800</b> FAX NO. (Optional): <b>310 552-9434</b> EMAIL ADDRESS (Optional): ATTORNEY FOR (Name): <b>JORGE ACOSTA CORTES</b>		FOR COURT USE ONLY <b>FILED</b> <b>LOS ANGELES SUPERIOR COURT</b> <b>DEC 15 2008</b> <b>JOHN A. CLARKE, CLERK</b> <b>BY RAUL SANCHEZ DEPUTY</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES. STREET ADDRESS: <b>111 North Hill Street</b> MAILING ADDRESS: <b>Room 109</b> CITY AND ZIP CODE: <b>Los Angeles 90012</b> BRANCH NAME: <b>Central District, Stanley Mosk Courthouse</b>		
PLAINTIFF/PETITIONER: <b>JORGE ACOSTA CORTES</b> DEFENDANT/RESPONDENT: <b>DOLE FOOD COMPANY, INC.</b>		
<b>PROOF OF SERVICE OF SUMMONS</b>		CASE NUMBER: <b>BC403364</b> Ref. No. or File No.: <b>38000/2733/ACOSTA CORTES</b>

- At the time of service I was at least 18 years of age and not a party to this action.
- I served copies of the (specify documents):  
**Summons; Complaint; Civil Case Cover Sheet; Civil Case Cover Sheet Addendum and Statement of Location; Notice of Related Case; Notice of Case Assignment; Adr Information Package**
- Party served (specify name of party as shown on documents served):  
**DOLE FOOD COMPANY, INC.**
  - ☒ Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b whom substituted service was made) (specify name and relationship to the party named in item 3a):  
**Margaret Wilson, Process Specialist/Agent for Service of Process, A white female approx. 55-65 years of age 5'4"-5'6" in height weighing 120-140 lbs with gray hair**
- Address where the party was served:  
**CT CORPORATION SYSTEM, 818 W 7TH Street, LOS ANGELES, CA 90017**
- I served the party (check proper box)
  - ☒ by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **12/10/2008** (2) at (time): **2:00 PM**
  - ☐ by substituted service. On (date): (2) at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
    - ☐ (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
    - ☐ (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
    - ☐ (physical address unknown) a person of at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
    - ☐ I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or ☐ a declaration of mailing is attached.
    - ☐ I attach a declaration of diligence stating actions taken first to attempt personal service.

Page 1 of 2

Form Adopted for Mandatory Use  
 Judicial Council of California  
 POS-010 (Rev. January 1, 2007)

**PROOF OF SERVICE OF SUMMONS**

Order No. 5276056 LAX FIL





PLAINTIFF/PETITIONER: <b>JORGE ACOSTA CORTES</b>	CASE NUMBER: <b>BC403364</b>
DEFENDANT/RESPONDENT: <b>DOLE FOOD COMPANY, INC.</b>	

- c. ☐ by mail and acknowledgment of receipt of service. I mailed the documents listed in Item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid,  
 (1) on (date): (2) from (city):  
 (3) ☐ with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30)  
 (4) ☐ to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40)
- d. ☐ by other means (*specify means of service and authorizing code section*):

☐ Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. ☐ as an individual defendant.  
 b. ☐ as the person sued under the fictitious name of (*specify*):  
 c. ☐ as occupant  
 d. ☒ On behalf of (*specify*): **DOLE FOOD COMPANY, INC.**  
 under the following Code of Civil Procedure section:
- |   |   |
|---|---|
| <input checked="" type="checkbox"/> 416.10 (corporation)          | <input type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation)             | <input type="checkbox"/> 416.60 (minor)                               |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee)                 |
| <input type="checkbox"/> 416.40 (association or partnership)      | <input type="checkbox"/> 416.90 (authorized person)                   |
| <input type="checkbox"/> 416.50 (public entity)                   | <input type="checkbox"/> 415.46 (occupant)                            |
|   | <input type="checkbox"/> other  |

7. Person who served papers

- a. Name: **Mario Lopez**  
 b. Address: **261 S. Figueroa Street, SUITE 280, LOS ANGELES, CA 90012**  
 c. Telephone number: **213-621-9999**  
 d. The fee for service was: **\$99.50**  
 e. I am:  
 (1) ☐ not a registered California process server.  
 (2) ☐ exempt from registration under Business and Professions Code section 22350(b).  
 (3) ☒ registered California process server:  
 (i) ☐ owner ☐ employee ☒ independent contractor  
 (ii) ☒ Registration No.: **5143**  
 (iii) ☒ County: **Los Angeles**

BY FAX

8. ☒ I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  
 or

9. ☐ I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: **12/12/2008**

**Mario Lopez**

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)

*Mario Lopez*

(SIGNATURE)



NOTICE SENT TO:

Lack, Walter, J., Esq.  
 Engstrom, Lipscomb & Lack  
 10100 Santa Monica Blvd., 12th Floor  
 Los Angeles CA 90067

**FILED**  
 LOS ANGELES SUPERIOR COURT  
 FILE STAMP

DEC 23 2008

JOHN A. CLARKE, CLERK  
*A. Olmos*  
 BY A. OLMOS, DEPUTY

# **SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

JORGE ACOSTA CORTES ET AL

Plaintiff(s),

VS.

DOLE FOOD COMPANY INC ET AL

Defendant(s).

CASE NUMBER

BC403364

**Notice of Case Reassignment and of  
 Order for Plaintiff to Give Notice**

**TO THE PLAINTIFF(S) AND PLAINTIFF'S ATTORNEY OF RECORD or PLAINTIFF(S) IN  
 PROPRIA PERSONA:**

YOU ARE HEREBY NOTIFIED that effective January 2, 2009, an order was made that the above-entitled action, previously assigned to Irving Feffer, is now and shall be assigned to Abraham Khan as an Individual Calendar (IC), direct calendaring judge for all purposes, including trial, in Department 51. (See Chapter 7, Los Angeles Court Rules.) All matters on calendar in this case will remain set on the dates previously noticed, in the Department indicated above unless otherwise ordered by the court.

NOTICE IS FURTHER GIVEN that the order directs that plaintiff and counsel for the plaintiff shall give notice of this all purpose case assignment by serving a copy of this Notice on all parties to this action within 10 days of service of this Notice by the court, and file proof of service thereof within 12 days of this Notice. Failure to timely give notice and file proof of service may lead to imposition of sanctions pursuant to Code of Civil Procedure Section 177.5 or otherwise.

## **CERTIFICATE OF MAILING**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Reassignment and Order upon each party or counsel named above by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown above with the postage thereon fully prepaid.

Date: December 23, 2008

John A. Clarke, EXECUTIVE OFFICER/CLERK

By A. OLMOS, Deputy Clerk

2008/12/23/10:55

NOTICE SENT TO:

Fisher, Joe J., II  
 Provost\*Umphrey Law Firm  
 P.O. Box 4905  
 Beaumont TX 77704

**FILED**  
 FILE STAMP  
 LOS ANGELES SUPERIOR COURT

DEC 23 2008

JOHN A. CLARKE, CLERK  
*A. Olmos*  
 BY A. OLMOS, DEPUTY

## SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

JORGE ACOSTA CORTES ET AL

Plaintiff(s),

VS.

DOLE FOOD COMPANY INC ET AL

Defendant(s).

CASE NUMBER

BC403364

Notice of Case Reassignment and of  
 Order for Plaintiff to Give Notice

## TO THE PLAINTIFF(S) AND PLAINTIFF'S ATTORNEY OF RECORD or PLAINTIFF(S) IN PROPRIA PERSONA:

YOU ARE HEREBY NOTIFIED that effective January 2, 2009, an order was made that the above-entitled action, previously assigned to Irving Feffer, is now and shall be assigned to Abraham Khan as an Individual Calendar (IC), direct calendaring judge for all purposes, including trial, in Department 51. (See Chapter 7, Los Angeles Court Rules.) All matters on calendar in this case will remain set on the dates previously noticed, in the Department indicated above unless otherwise ordered by the court.

NOTICE IS FURTHER GIVEN that the order directs that plaintiff and counsel for the plaintiff shall give notice of this all purpose case assignment by serving a copy of this Notice on all parties to this action within 10 days of service of this Notice by the court, and file proof of service thereof within 12 days of this Notice. Failure to timely give notice and file proof of service may lead to imposition of sanctions pursuant to Code of Civil Procedure Section 177.5 or otherwise.

## CERTIFICATE OF MAILING

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served the Notice of Case Reassignment and Order upon each party or counsel named above by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original filed/entered herein in a separate sealed envelope to each address as shown above with the postage thereon fully prepaid.

Date: December 23, 2008

John A. Clarke, EXECUTIVE OFFICER/CLERK

A. OLMOS

By \_\_\_\_\_, Deputy Clerk

12/23/08